

**PROPOSED AMENDMENTS TO RULE XXII OF THE
STANDING RULES OF THE SENATE
(RELATING TO CLOTURE)**

1250 -2

**HEARINGS
BEFORE A
SPECIAL SUBCOMMITTEE
OF THE
COMMITTEE ON
RULES AND ADMINISTRATION
UNITED STATES SENATE
EIGHTY-FIFTH CONGRESS
FIRST SESSION
ON
S. Res. 17, S. Res. 19, S. Res. 21, S. Res. 28, S. Res. 29,
S. Res. 30, S. Res. 32, and S. Res. 171
RESOLUTIONS PROPOSING AMENDMENTS TO RULE XXII
OF THE STANDING RULES OF THE SENATE**

JUNE 17, 24, 25, 28, JULY 2, 9, AND 16, 1957

Printed for the use of the Committee on Rules and Administration



**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1957**

93635

BEST AVAILABLE COPY

COMMITTEE ON RULES AND ADMINISTRATION

THOMAS C. HENNINGS, Jr., Missouri, *Chairman*

CARL HAYDEN, Arizona

CARL T. CURTIS, Nebraska

THEODORE FRANCIS GREEN, Rhode Island

JOHN SHERMAN COOPER, Kentucky

MIKE MANSFIELD, Montana

JACOB K. JAVITS, New York

HERMAN E. TALMADGE, Georgia

CLIFFORD P. CASE, New Jersey

GORDON F. HARRISON, *Chief Clerk and Counsel*

DARRELL ST. CLAIRE, *Professional Staff Member*

ROBERT S. MCCAIN, *Professional Staff Member*

SPECIAL SUBCOMMITTEE ON AMENDMENTS TO RULE XXII

HERMAN E. TALMADGE, Georgia

JACOB K. JAVITS, New York

LANGDON WEST, *Special Counsel*

JOHN P. CODER, *Editorial Assistant*

CONTENTS

Proposed Amendments to Rule XXII (Relating to Cloture), a staff study of the Committee on Rules and Administration.....	Page 3
Text of—	
Senate Resolution 17.....	9
Senate Resolution 19.....	10
Senate Resolution 21.....	10
Senate Resolution 28.....	11
Senate Resolution 29.....	11
Senate Resolution 30.....	11
Senate Resolution 32.....	11
Senate Resolution 171.....	12
Statement of—	
Barr, John U., Federation for Constitutional Government, New Orleans, La.....	215
Biemiller, Andrew J., legislative director, AFL-CIO, Washington, D. C.....	77
Bloch, Charles J., Macon, Ga.....	203
Brant, Irving, Washington, D. C.....	170
Bundy, Edgar C., president, Abraham Lincoln National Republican Club, Wheaton, Ill.....	189
Burdette, Franklin L., director, Bureau of Governmental Research, University of Maryland, College Park, Md.....	121
Burns, James M., professor of political science, Williams College, Williamstown, Mass.....	106
Cadwalader, Thomas F., Baltimore, Md.....	249
Campbell, Boyd, Jackson, Miss.....	223
Cartwright, Frederick G., president, Englewood, N. J., Anti-Communist League, Englewood, N. J.....	244
Case, Clifford P., a United States Senator from the State of New Jersey.....	203
Clark, Joseph S., a United States Senator from the State of Pennsylvania.....	151
Comparet, Bertrand L., Citizens' Congressional Committee, San Diego, Calif.....	263
Cooper, John Sherman, a United States Senator from the State of Kentucky.....	12
Deutsch, Eberhard P., New Orleans, La.....	197
Douglas, Paul H., a United States Senator from the State of Illinois.....	31
Erb, Mrs. Ray L., national defense chairman, Daughters of American Revolution, Washington, D. C.....	105
Ferman, Irving, director, Washington, D. C., office, American Civil Liberties Union, Washington, D. C.....	124
Foster, W. L., United States Day Committee, Tulsa, Okla.....	270
Frankston, Mrs. W. J., Wheeling, W. Va.....	168
Garman, Dr. W. O. H., president, Associated Gospel Churches; member, executive committee, American Council of Christian Churches, Wilkesburg, Pa.....	255
Goodrich, Ernest W., Defenders of State Sovereignty and Individual Liberties, Surry, Va.....	240
Green, Andrew Wilson, For America, Harrisburg, Pa.....	278
Gunther, John J., legislative director, Americans for Democratic Action, Washington, D. C.....	219
Hancock, Austin F., chairman, American Heritage Protective Committee, San Antonio, Tex.....	84
Hart, Merwin K., president, National Economic Council, New York, N. Y.....	230

Statement of—Continued

Henderson, J. D., national managing director, American Association of Small Business, New Orleans, La.....	Page 234
Hill, Lister, a United States Senator from the State of Alabama.....	257
Jenkins, Mrs. Alexander, Baltimore, Md.....	74
Kefauver, Estes, a United States Senator from the State of Tennessee.....	105
Ketchum, Omar B., director, National legislative service, Veterans of Foreign Wars of the United States, Washington, D. C.....	111
Koontz, Dr. Amos R., Baltimore, Md.....	246
Mitchell, Clarence, director, Washington bureau of the National Association for the Advancement of Colored People, Washington, D. C.....	251
Montgomery, George S., Jr., For America, New York, N. Y.....	182
Neuberger, Richard L., a United States Senator from the State of Oregon.....	154
Putnam, Harold L., executive secretary, National Society of the Sons of the American Revolution, Washington, D. C.....	23
Reuther, Walter P., president, United Automobile Workers, Detroit, Mich.....	131
Saltonstall, Leverett, a United States Senator from the State of Massachusetts.....	237
Saye, Albert B., professor of political science, University of Georgia, Athens, Ga.....	117
Snow, Mrs. John Howland, president, National Association of Pro America, New Canaan, Conn.....	195
Sparkman, John, a United States Senator from the State of Alabama.....	226
Stennis, John, a United States Senator from the State of Mississippi.....	87
Taylor, Tyre, general counsel, Southern States Industrial Council, Washington, D. C.....	66
Thurmond, Strom, a United States Senator from the State of South Carolina.....	13
Wicker, John J., Jr., representing W. C. "Dan" Daniel, national commander of the American Legion, Richmond, Va.....	157
Written statements of United States Senators:	
Bush, Prescott, Connecticut.....	30
Hennings, Thomas C., Missouri.....	287
Ives, Irving M., New York.....	65
Jenner, William E., Indiana.....	282
Johnson, Lyndon B., Texas.....	281
Johnston, Olin D., South Carolina.....	19
Kuchel, Thomas H., California.....	102
Langer, William, North Dakota.....	98
Payne, Frederick G., Maine.....	30
Potter, Charles E., Michigan.....	130
Robertson, A. Willis, Virginia.....	19
Smith, H. Alexander, New Jersey.....	29

APPENDIX

Exhibit 1. Limitation of Debate in the United States Senate, by George B. Galloway, senior specialist in American Government, Legislative Reference Service, Library of Congress.....	291
Exhibit 2. Written statements of organization and individuals:	
American Association of Small Business.....	311
American Constitution Party of Iowa.....	311
American Council of Christian Laymen.....	311
American Education Association.....	329
American Flag Association of the United States of America.....	312
American League Against Communism.....	354
American Legion, Sauls-Bridges Post No. 13, Tallahassee, Fla.....	313
American Veterans Committee.....	330
AMVETS on the Air, the Veterans' Voice of America, Inc.....	313
Anti-Communist League of America, Inc.....	330
Association of Citizens' Councils of South Carolina.....	332
Christian Citizens Crusade, Inc.....	319
Circuit Riders, Inc.....	333

Exhibit 2. Written statements of organization and individuals:—Continued	Page
Citizens United, Inc.....	313
Committee for Constitutional Government, Inc.....	334
Constitutional Action, Inc.....	313
Constitutional Foundation, San Diego, Calif.....	325
Crippen, John K.....	330
Defenders of the American Constitution, Inc.....	335
Defenders of American Education.....	314
Descendants of the Signers of the Declaration of Independence.....	314
Florida States Rights, Inc.....	314
Frank, John.....	336
Goldsborough, Robert H.....	337
Goodbody & Co.....	318
Gosnell, Prof. Cullen B.....	338
Individuals for Freedom.....	318
International Union of Electrical, Radio, and Machine Workers, AFL-CIO.....	355
Jewish War Veterans of the United States of America.....	338
Liberty and Property.....	319
MacLean, Donald.....	339
Manion, Clarence.....	339
Mantel, Howard Norman.....	344
Massachusetts Committees of Correspondence.....	314
Military Order of the Crusades.....	319
Minute Women of the United States of America, Inc.....	319
Mississippi State Taxpayers Association.....	320
National Association of Christian Schools.....	320
National Republic.....	321
National Society, Children of the American Colonists.....	321
National Society of Huguenots in the State of Iowa.....	322
National Society of New England Women.....	322, 323
National Society Patriotic Women of America, Inc.....	323
National Society United States Daughters of 1812.....	324
Pro America, Inc.:	
Fort Worth Chapter.....	345
Illinois Chapter.....	320
New Jersey Chapter.....	324, 345
Prufer, Prof. Julius F.....	346
Realpolitical Institute.....	346
Republican Women of Park Ridge, Inc., Illinois.....	324
Robnett, George.....	347
Small Property Owners' Association.....	325
Sons of the American Revolution:	
Georgia State Society.....	315
National Society.....	323
Tallahassee, Florida Chapter.....	347
Sons and Daughters of Liberty:	
Banner Council No. 67.....	347
Fidelity Council No. 22.....	348
Lafayette Council No. 27.....	348
Old Glory Council No. 56.....	348
Pride of Belleville Council No. 215.....	348
Pride of Boonton Council No. 103.....	360
Pride of Malaska Council No. 100.....	349
Pride of New Jersey Council No. 243.....	349
Pride of Park Council No. 15.....	349
State Council of Ohio.....	349
True American Council No. 3.....	350
Sons of Confederate Veterans.....	326, 351
Sons of Union Veterans of the Civil War.....	350
Taft, Robert Bent.....	351
United Neighbors, Inc.:	
Letter to Senator Lyndon B. Johnson.....	327
Letter to Senator William F. Knowland.....	327
Letter to Senator Mike Mansfield.....	326

Exhibit 2. Written statements of organization and individuals:-- Continued	Page
United Mothers of America, Inc.	328
United States Flag Committee	328
Vigilant Women for the Bricker Amendment in Iowa	329
Wallace, Judge George C.	356
Western Tax Council, Inc.	329
Women's International League for Peace and Freedom	353
Exhibit 3. List of names of other individuals expressing opinion on proposed changes in rule XXII in letters and telegrams to the subcommittee.	360
Exhibit 4. Petitions	363

MISCELLANEOUS

Bibliography of material relating to cloture and filibustering	292
Excerpts from books and articles on various aspects of cloture:	
Absurdities and Conflicts in Senate Rules Are Outlined, by Irving Brant (Congressional Record)	177
Filibustering in the Senate, by Franklin L. Burdette	200, 211, 212
Memorandum on the Development of Cloture and the Previous Question in American and British Practice, by Irving Brant (Congressional Record)	172
The Citadel, by William S. White	94
The American Senate, by Lindsay Rogers	76, 201
Unwritten Rules of American Politics, by John Fischer (Harper's)	119
Filibustering:	
Arguments pro and con	308-310
Editorials on	50-63
Legislation delayed or defeated by	306
Outstanding Senate filibusters, 1841-1955	304
Remedies (suggested) for "obstruction" in the Senate	310
The Filibuster and How To Cure It, address by Senator Paul H. Douglas, Illinois, at Ohio State University	37
History of efforts to limit debate in the Senate	295
Letter from Senator Thomas C. Hennings, Jr., to Senator Herman E. Talmadge relative to testimony of Austin F. Hancock before special subcommittee, together with Senator Talmadge's reply	129
Limitation of debate in the House of Representatives	310
Negroes:	
Employment of	72, 83
Population in the so-called Deep Southern States	255
Voting rights of	73
Political party platform planks on civil rights	78
Proposed Amendments to Rule XXII (Relating to Cloture), staff study of the Committee on Rules and Administration	3
Quotations on various aspects of cloture:	
Former Presidents of the United States:	
Thomas Jefferson	66, 200
Abraham Lincoln	200
Woodrow Wilson	160, 212
Former Vice Presidents of the United States:	
Alben W. Barkley	104
Charles E. Dawes	103
John Nance Garner	20
Adlai E. Stevenson	76
Vice President Richard Nixon	63
Former United States Senators:	
Theodore E. Burton, Ohio	122, 214
John C. Calhoun, South Carolina	191
George F. Edmunds, Vermont	191
Robert C. Hendrickson, New Jersey	165
George F. Hoar, Massachusetts	202
Wesley L. Jones, Washington	214
William R. King, Alabama	199
Robert M. La Follette, Sr., Wisconsin	75, 90
Henry Cabot Lodge, Sr., Massachusetts	67, 104, 261, 262, 284
Patrick A. McCarran, Nevada	286
Charles L. McNary, Oregon	212, 262

Quotations on various aspects of cloture--Continued

Former United States Senators --Continued	Page
George W. Norris, Nebraska.....	165, 211
Lee S. Overman, North Carolina.....	201
Elihu Root, New York.....	211
Robert A. Taft, Ohio.....	75
Henry M. Teller, Colorado.....	208
Arthur H. Vandenberg, Michigan.....	105
United States Senators:	
Clinton P. Anderson, New Mexico.....	144, 205, 206
James O. Eastland, Mississippi.....	252
Richard B. Russell, Georgia.....	231
Rules of the Senate which relate to debate.....	202
Rule XXII (cloture).....	6-9, 14
Senate Resolutions 17, 19, 21, 28, 29, 30, 32, 171 (texts of).....	9-12
Supreme Court decision in <i>McGrain v. Dougherty</i>	147
Votes in the Senate on invoking cloture rule.....	46
March 11, 1949: On appeal from ruling of Vice President Barkley that cloture rule (XXII) does not apply to a motion to take up a measure.....	47
January 7, 1953: On motion of Senator Taft to lay on the table the motion of Senator Anderson to proceed to the consideration of the adoption of rules for the Senate of the 83d Congress.....	48
January 4, 1957: On motion of Senator Johnson of Texas to lay on the table the motion of Senator Anderson to take up for immediate consideration the adoption of rules for the Senate of the 85th Congress.....	49
Vice President, opinion of, as to the constitutionality of section 3 of rule XXII of the Standing Rules of the Senate.....	63



PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE

MONDAY, JUNE 17, 1957

UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in room 104-B, Senate Office Building, Senator Herman E. Talmadge (chairman of the subcommittee) presiding.

Present: Senators Talmadge and Javits.

Also present: Gordon F. Harrison, chief clerk and counsel, Langdon West, special counsel to subcommittee; Darrell St. Claire, professional staff member; Robert S. McCain, professional staff member; William H. Burson, executive aid to Senator Herman E. Talmadge, and Sidney Kelly, Jr., administrative assistant to Senator Jacob K. Javits.

Senator TALMADGE. The subcommittee will come to order.

For the purpose of the record this subcommittee was created by order of the Rules Committee to take testimony on seven pending resolutions proposing amendments to Senate rule 22.

The subcommittee is composed of the junior Senator from New York, Mr. Javits, and myself, and it is the desire, I am sure, of Senator Javits as well as myself to take the testimony of those who are interested as expeditiously as we possibly can in order to build a record to report to the full Rules Committee and thereafter to the Senate of the United States as the case may be.

Do you desire to make a statement?

Senator JAVITS. Yes, I desire to make a short statement, Mr. Chairman.

Hearings are of course normally a necessary preliminary to the enactment of legislation but I believe there has been so much testimony on the subject of cloture and the effort to deal with filibusters that we might well have dispensed with general hearings and completed the record with a factual analysis of events occurring since the last hearings were held in October 1951.

It will be recalled that this issue was debated and reported upon by our parent committee on May 12, 1953, and has been the subject of debate since, and indeed a full dress debate with all facts brought up to date as recently as January of this year 1957.

As the committee has ordered hearings I shall do my utmost to make them useful in terms of development of the subject.

My views are well known as I am cosponsor of the Douglas resolution to permit cloture upon the vote of a constitutional majority of the Senate after 15 days' debate.

Such a motion would have been successful in 9 out of the 22 votes on cloture since 1917, whereas existing rules caused only 4 of these cloture motions to succeed, the last 1 in 1927, 30 years ago.

The principal sufferers from the failure of cloture have been the civil-rights bills.

FEPC, anti-lynching and anti-poll-tax bills have gone down under filibusters.

Other legislation, with some exceptions, no longer major issues, has managed to be passed some time although delayed by filibusters.

Civil-rights bills have failed consistently, however, for that reason. It is important to emphasize that the fact that a majority of the Senate was for such bills did not enable it to act.

I believe it is an inherent and fundamental weakness of our whole governmental system that a small minority can paralyze a majority for action on the protection of vital constitutional rights for millions of Americans in this way.

The most complete debate and deliberation is not in question. This will be provided for under any rule change which is likely to pass. What is in question is the mere pretense of debate for the purpose of blocking action, which is an affront to the Senate and to the country.

I will expect witnesses to address themselves to the subject of the expectation of any action on civil-rights measures unless rule XXII is changed.

Also I will do my best to hold the hearings within a reasonable compass of time and to prevent a filibuster within the committee which is seeking to deal with filibusters.

I point out that the hearings on this subject in 1947 took 4 days, in 1949 6 days, and in 1951 4 days again. Hence no set of hearings has exceeded 6 separate days of hearings.

I believe it fully within the authority of this subcommittee to see that the hearings do not get out of hand.

Now Mr. Chairman, I would like also—I notice the Chair has this analysis of all the bills——

Senator TALMADGE. We will put that in the record.

Senator JAVITS. If the Chair would and then I would like to put something in the record.

Senator TALMADGE. I think at the outset we should insert in the record the comparative analysis of the various resolutions pending before the committee for study which has been prepared by the staff of the Committee on Rules and Administration.

We will insert that in the record as well as the full text of each pending resolution.

(The comparative analysis of S. Res. 17, S. Res. 19, S. Res. 21, S. Res. 28, S. Res. 29, S. Res. 30, and S. Res. 32, of the 85th Congress, 1st session, and the texts of those resolutions, and that of S. Res. 171—subsequently referred to the committee, are as follows:)

[COMMITTEE PRINT]

85TH CONGRESS }
1st Session }

SENATE

**PROPOSED AMENDMENTS TO RULE XXII
(RELATING TO CLOTURE)**

**A Comparative Analysis of S. Res. 17, S. Res. 19, S. Res. 21,
S. Res. 28, S. Res. 29, S. Res. 30, and S. Res. 32, of
the Eighty-fifth Congress, First Session**

**STAFF STUDY
OF THE
COMMITTEE ON
RULES AND ADMINISTRATION
UNITED STATES SENATE**



Printed for the use of the Committee on Rules and Administration

**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1957**



PROPOSED AMENDMENTS TO RULE XXII

(RELATING TO CLOTURE)

During the 85th Congress, 1st session (up to February 11, 1957), the following proposals to amend standing rule XXII, relating to cloture, have been referred to the Committee on Rules and Administration for consideration:

Resolution No.	Date of reference to committee	Sponsor and cosponsors
S. Res. 17.....	Jan. 7, 1957	Mr. Douglas, Mr. Ives, Mr. Murray, Mr. Humphrey, Mr. Morse, Mr. Hennings, Mr. Chaves, Mr. Jackson, Mr. Potter, Mr. McNamara, Mr. Case of New Jersey, Mr. Neuberger, Mr. Carroll, Mr. Clark, Mr. Javits.
S. Res. 19.....	do.....	Mr. Case of South Dakota.
S. Res. 21.....	do.....	Mr. Morse.
S. Res. 28.....	Jan. 9, 1957	Mr. Ives.
S. Res. 29.....	do.....	Mr. Humphrey, Mr. Anderson, Mr. Clark, Mr. Douglas.
S. Res. 30.....	do.....	Mr. Knowland, Mr. Johnson of Texas, Mr. Saltonstall, Mr. Bridges, Mr. Dirksen, Mr. Smith of New Jersey, Mr. Thyne, Mr. Barrett, Mr. Beall, Mr. Cotton, Mr. Hruska, Mr. Payne, Mr. Purtell, Mr. Revercomb, Mr. Schoeppel, Mr. Watkins, Mr. Bricker, Mr. Bennett, Mr. Mundt, Mr. Capehart, Mr. Kennedy, Mr. Mansfield, Mr. Williams, Mr. Monroney, Mr. Kerr, Mr. Church, Mr. Bible, Mr. O'Mahoney, Mr. Hayden, Mr. Gore, Mr. Jenner, Mr. Butler, Mrs. Smith of Maine, Mr. Carlson, Mr. Martin of Pennsylvania, Mr. Anderson, Mr. Frear, Mr. Green, Mr. Case of South Dakota.
S. Res. 32.....	do.....	Mr. Bush.

Rule XXII consists of three sections. For the purposes of this analysis the text of the present rule is given section by section with the portions intended to be deleted or substituted for in *italic*. The changes proposed by the respective resolutions are indicated opposite the section or paragraph of rule XXII to which they would apply.

It should be noted that no change in section 1 of rule XXII is contemplated by any of the resolutions considered. Also, two proposals are included which would not effect any change in rule XXII. In addition to amending that rule, Senate Resolution 19 would provide—

That the Senate do now adopt as its rules for the Eighty-fifth Congress the rules which prevailed during the Eighty-fourth Congress * * *

and Senate Resolution 30 would add to rule XXXII the following new section:

2. The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

The analysis of the proposed amendments to rule XXII follows:

Comparative analysis of proposed amendments to Rule XXII (relating to cloture)

Text of present rule XXII (portions to be changed in <i>italics</i>)	Proposed changes ¹	S. Res. 17 (Douglas et al.)	S. Res. 19 (Case, S. Dak.)	S. Res. 21 (Morse)	S. Res. 28 (Ives)	S. Res. 29 (Humphrey et al.)	S. Res. 30 (Knowland-Johnson et al.)	S. Res. 32 (Bunah)
(Section 1) 1. When a question is pending, no motion shall be received but— To adjourn. To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain. To take a recess. To proceed to the consideration of executive business. To lay on the table. To postpone indefinitely. To postpone to a day certain. To commit. To amend. Which several motions shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.	(None)							

See footnotes at end of table, p. 9.

Comparative analysis of proposed amendments to Rule XXII (relating to cloture)—Continued

Text of present rule XXII (portions to be changed in <i>italics</i>)	Proposed changes ¹	S. Res. 17 (Doughs et al.)	S. Res. 19 (Case, S. Dak.)	S. Res. 21 (Morse)	S. Res. 28 (Ives)	S. Res. 29 (Humphrey et al.)	S. Res. 30 (Knowland-Johnson et al.)	S. Res. 32 (Bunb)
(Section 2)								
2. Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, <i>except subsection 3 of rule XXII</i> , at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets <i>on the following calendar day but one</i> , he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:	Strike out "except subsection 3 of rule XXII"	X	-----	X	X	-----	X	X
	Strike out "on the <i>following calendar day but one</i> " and insert:							
	"on the <i>fifth</i> calendar day thereafter (exclusive of Sundays and legal holidays)"	-----	-----	-----	-----	-----	-----	X
	"on the <i>twelfth</i> calendar day thereafter (exclusive of Sundays and legal holidays)"	-----	-----	-----	X	-----	-----	-----
	"on the <i>fifteenth</i> calendar day thereafter (exclusive of Sundays and legal holidays)"	X	-----	-----	-----	-----	-----	-----
"Is it the sense of the Senate that the debate shall be brought to a close?"	(None)	-----	-----	-----	-----	-----	-----	-----
And if that question shall be decided in the affirmative <i>by two-thirds of the Senators duly chosen and sworn</i> , then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.	Strike out "by two-thirds of the Senators duly chosen and sworn" and insert in lieu thereof:							
	"by two-thirds of the Senators present and voting"	X	X	-----	-----	-----	X	X
	"but in no case less than a majority of the Senators duly chosen and sworn"	-----	X	-----	-----	-----	-----	-----
	"by a majority vote of those voting"	-----	-----	X	-----	-----	-----	-----
	"by the vote of a majority of the authorized membership of the Senate"	-----	-----	-----	X	-----	-----	-----

Comparative analysis of proposed amendments to Rule XXII (relating to cloture)—Continued

Text of present rule XXII (portions to be changed in italics)	Proposed changes ¹	S. Res. 17 (Douglas et al.)	S. Res. 19 (Case, S. Dak.)	S. Res. 21 (Morris)	S. Res. 23 (Ives)	S. Res. 29 (Humphrey et al.)	S. Res. 30 (Knowland-Johnson et al.)	S. Res. 32 (Bush)
(Section 2)—Continued								
Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, <i>and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks.</i>	"by a majority vote of the Senators duly chosen and sworn" (7) Strike out all after the word "same" and insert: "; except that any Senator may yield to any other Senator all or any part of the aggregate period of time which he is entitled to speak; and the Senator to whom he so yields may speak for the time so yielded in addition to any period of time which he is entitled to speak in his own right. It shall be the duty of the Presiding Officer to keep the time of each Senator who speaks."	X		X				
Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time.	(None)							
No dilatory motion, or dilatory amendment, or amendment not germane shall be in order.	(None)							
Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.	(None)							

See footnotes at end of table, p. 9.

Comparative analysis of proposed amendments to Rule XXII (relating to cloture)—Continued

Text of present rule XXII (portions to be changed in <i>italics</i>)	Proposed changes ¹	S. Res. 17 (Douglas et al.)	S. Res. 19 (Case, S. Dak.)	S. Res. 21 (More)	S. Res. 25 (Ives)	S. Res. 29 (Humphrey et al.)	S. Res. 30 (Knowland-Johnson et al.)	S. Res. 32 (Bush)
(Section 3)								
3. The provisions of the last paragraph of rule VIII (prohibiting debate on motions made before 2 o'clock) <i>and of subsection 2 of this rule shall not apply to any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate.</i>	Strike out: "and of subsection 2 of this rule" Delete (or repeal) section 3 "Resolved, That it is the sense of the Senate that section 3 of rule XXII of the Standing Rules of the Senate, having operated as an infringement on the constitutional right of the Senate to make its own rules, is null, void and of no further effect during the Eighty-fifth Congress."	X	X	X	X	X	X	X

¹ For the purposes of this tabulation it has been necessary to alter slightly the texts of some of the proposals. These changes, however, do not affect the legislative intent.

² S. Res. 17 differs from the other proposals by providing for 2 votes: (1) On the following calendar day but one with a vote of two-thirds of the Senators present and voting required; and, if that should fail, (2) on the fifteenth calendar day thereafter with a vote of a majority of the Senators duly chosen and sworn required.

³ Effective only after fifteenth calendar day. (See footnote 2, *supra*.)

[S. Res. 17, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That section 2 of rule XXII of the Standing Rules of the Senate is amended to read as follows:

"2. (a) If at any time, notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, a motion, signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate pursuant to this subsection, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

"And if that question shall be decided in the affirmative by a two-thirds vote of the Senators present and voting, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

"Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of

relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

"(b) If at any time, notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, a motion, signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate pursuant to this subsection, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the fifteenth calendar day thereafter (exclusive of Sundays and legal holidays), he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without further debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

"And if that question shall be decided in the affirmative by a majority vote of the Senators duly chosen and sworn, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

"Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate."

SEC. 2. Section 3 of rule XXII of the Standing Rules of the Senate is repealed.

[S. Res. 19, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That the Senate do now adopt as its rules for the Eighty-fifth Congress the rules which prevailed during the Eighty-fourth Congress except that rule 22 of the Standing Rules of the Senate is amended by striking from subsection 2 the words "two-thirds of the Senators duly chosen and sworn" and inserting in lieu thereof "two-thirds of the Senators present and voting but in no case less than a majority of the Senators duly chosen and sworn."

[S. Res. 21, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That subsection 2 of rule XXII of the Standing Rules of the Senate, relating to cloture, is hereby amended to read as follows:

"If at any time, notwithstanding the provisions of rule III or VI or any other rule of the Senate, a motion, signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

"And if that question shall be decided in the affirmative by a majority vote of those voting, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

"Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same; except that any Senator may yield to any other Senator all or any part of the aggregate period of time which he is entitled to speak; and the Senator to whom he so yields may

speak for the time so yielded in addition to any period of time which he is entitled to speak in his own right. It shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate."

Sec. 2. Subsection 3 of such rule is hereby repealed.

[S. Res. 23, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That rule XXII of the Standing Rules of the Senate (relating to cloture) is modified as follows:—

(1) The first paragraph of subsection 2 is amended by striking out "except subsection 3 of rule 22".

(2) The first paragraph of subsection 2 is amended by striking out "on the following calendar day but one" and inserting in lieu thereof "on the twelfth calendar day thereafter (exclusive of Sundays and legal holidays)".

(3) The second paragraph of subsection 2 is amended by striking out "by two-thirds of the Senators duly chosen and sworn" and inserting in lieu thereof "by the vote of a majority of the authorized membership of the Senate".

(4) Subsection 3 is hereby deleted.

[S. Res. 29, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That it is the sense of the Senate that section 3 of rule XXII of the Standing Rules of the Senate, having operated as an infringement on the constitutional right of the Senate to make its own rules, is null, void, and of no further effect during the Eighty-fifth Congress.

[S. Res. 30, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That subsection 2 of rule XXII of the Standing Rules of the Senate is amended (1) by striking out "except subsection 3 of rule XXII," and (2) by striking out "two-thirds of the Senators duly chosen and sworn" and inserting in lieu thereof "two-thirds of the Senators present and voting".

Sec. 2. Subsection 3 of rule XXII of the Standing Rules of the Senate is amended by striking out "and of subsection 2 of this rule".

Sec. 3. Rule XXXII of the Standing Rules of the Senate is amended by inserting "1." immediately preceding "At", and by adding at the end thereof a new paragraph as follows:

"2. The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules."

[S. Res. 32, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That rule XXII of the Standing Rules of the Senate (relating to cloture) is modified as follows:

(1) The first paragraph of subsection 2 is amended by striking out "except subsection 3 of rule 22."

(2) The first paragraph of subsection 2 is amended by striking out "on the following calendar day but one," and inserting in lieu thereof, "on the fifth calendar day thereafter (exclusive of Sundays and legal holidays)."

(3) The second paragraph of subsection 2 is amended by striking out "by two-thirds of the Senators duly chosen and sworn," and inserting in lieu thereof, "by the vote of two-thirds of the Senators present and voting."

(4) Subsection 3 is hereby deleted.

[S. Res. 171, 85th Cong., 1st sess.]

RESOLUTION

Resolved, That subsection 2 of rule XXII of the Standing Rules of the Senate (relating to cloture) is amended by inserting before the word "following" in the eighth line of such subsection the word "fifth", and by striking out "by two-thirds of the Senators duly chosen and sworn" and inserting in lieu thereof "by two-thirds of the Senators present and voting".

Senator JAVITS. Mr. Chairman, I would also like to insert in the record of the hearing an analysis made by the Legislative Reference Service entitled "Limitation of Debate in the United States Senate," dated December 1956, which I think is one of the typically fine factual analyses of that service. It was compiled by George B. Galloway, senior specialist in American Government.

Senator TALMADGE. No objection.

(The document referred to may be found in the appendix as exhibit 1, p. 291.)

Senator TALMADGE. Senator Cooper, do you want to make a statement?

Senator COOPER. Just a short one, please.

Senator TALMADGE. We are very happy to have you here.

In fact, we had hoped at this particular meeting and also the meeting which we have scheduled for Friday to hear Senators. A number of them have expressed their desire to testify, but apparently they are not ready at this particular time.

We are delighted and honored to have with us a member of our Rules Committee, the distinguished Senator from Kentucky. Senator Cooper, we will be happy to hear from you at this time if you desire to make a statement.

STATEMENT OF HON. JOHN SHERMAN COOPER, UNITED STATES SENATOR FROM THE STATE OF KENTUCKY

Senator COOPER. Mr. Chairman and Senator Javits—I think you are cochairmen—I do not wish to make at this time a statement on the merits of the resolutions which are before you.

As you know I am not a member of this subcommittee, although I am a member of the Committee on Rules.

Neither am I a sponsor of any of the resolutions that are before this committee. Nevertheless, I wanted to attend the opening of the hearings and attend from time to time because I am a member of the Rules Committee, and I want to be able in a more informed way to make a determination when a resolution comes before the full committee.

I might say also that, when the time comes, I expect to support a resolution which I hope will enable us to preserve reasonable debate and at the same time permit a decision upon issues which come before the Senate.

¹ S. Res. 171, submitted by Mr. Jenner and referred to the Committee on Rules and Administration subsequent to these hearings, is identical in text to his resolution S. Res. 20, 83d Cong., 1st sess., which was reported by the committee May 12, 1933, but not acted upon by the Senate.

My chief purpose in being here is to seek information and to support the subcommittee. It is unique in being a two-man subcommittee. I believe it has great possibilities for arriving at some solution of this problem.

Senator TALMADGE. We are delighted to have you with us, Senator, and we would be happy to have you, as a member of the Rules Committee, attend as many sessions as you can. We would also be happy to have any other Members of the Senate sit in with us at any time.

I notice the distinguished junior Senator from the State of South Carolina is with us and we are happy to have you, Senator Thurmond. If you care to make a statement at this time, sir, we will be delighted to have you do so.

**STATEMENT OF HON. STROM THURMOND, UNITED STATES
SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator THURMOND. Thank you very much, Mr. Chairman.

As I understand it, you are now considering changes to Rule 22; is that correct?

Senator TALMADGE. Yes, we are taking testimony on seven resolutions that seek to change rule 22.

Senator JAVITS. Senator, may I suggest if you would be more comfortable seated, it is fine with us.

Senator TALMADGE. We are quite informal.

Senator THURMOND. Thank you very much, but I would just as soon stand.

I am opposed to any change in the rule that will weaken the right of free debate.

There are four reasons why I oppose any such change. The first, free debate is the best means of bringing out the pertinent points and arguments with reference to any question.

When debate is limited, there is great likelihood that all points and questions will not be answered and that all Members of the Senate will not have the opportunity to be fully informed on the matter under consideration.

Second, that limiting debate would prevent the views of people of the United States from being fully presented by their duly elected representatives in the Senate.

Third, that under present rules of the Senate, it is already possible to limit debate through a unanimous consent agreement if there is no need or request to continue debate.

Also there is already in rule 22 a provision for cutting off debate if two-thirds of the Senators wish to do so.

Fourth, the limiting of debate would in effect be strengthening the executive branch of the Government at the expense of the legislative branch, if a strong executive had control of the leadership in the Senate.

If rule 22 is weakened, it would be much simpler for a President to dictate to the Senate than at present, provided he controlled the leadership and had a majority of his party in the Senate.

It is my firm conviction that the elements who are now pushing the movement for a change in the rules will be among those who might be hurt in the future. I believe that the present rule is a reasonable one and that we should not weaken it; if anything we should strengthen

it, and should not take any step that will tend to cut off free debate any more than is now provided in rule 22.

Thank you very much.

Senator TALMADGE. Thank you very much, Senator Thurmond. We are happy to have you with us and we would be delighted to have you sit in at any time you desire.

Any questions, Senator?

Senator JAVITS. Senator Thurmond, would you mind answering a few questions, and again I ask would you be more comfortable seated?

Senator THURMOND. That is all right. Go right ahead.

Senator JAVITS. Senator, I notice in your State, South Carolina, that debate may be limited by two-thirds of the senate. That is rule 14 of your State senate rules.

Now, is that two-thirds present and voting or two-thirds of the constitutional senate of the State of South Carolina?

Senator THURMOND. My recollection is it is two-thirds of the entire senate.

Senator JAVITS. But you are not positive?

Senator THURMOND. I am not quite positive of that.

I was a member of the State senate for 5 years in South Carolina, and I don't think—although we had extended debate on numerous occasions—there was ever an effort made, or not a successful effort as I recollect, to limit debate and take a senator off his feet on the floor.

Senator JAVITS. Now, I notice also that your senate has a rule that no senator may speak more than 2 hours in any one legislative day on any one bill or resolution, so that really that is a pretty much tighter limitation than anything we are talking about under any of these resolutions—a limitation of 2 hours?

Senator THURMOND. But the legislative day down there probably is a little different from the legislative day here. Up here the legislative day goes from one day to the next and continues ad infinitum.

Senator TALMADGE. Will the Senator yield for a question?

Senator JAVITS. Certainly.

Senator TALMADGE. Don't you think that the rules of procedure in debate ought to be different between the legislative body of a sovereign State and the United States Senate which is composed of representatives of 48 sovereign States?

Senator THURMOND. I just started to add to the question propounded by the distinguished Senator from New York that I think of all places that there should be free debate or freer debate than anywhere else is in the United State Senate. This is known as the greatest deliberative body in the world. If we change this rule any more and weaken the present rule 22, it can not longer be known as the greatest deliberative body in the world.

I think it is because of free debate and the opportunity of Senators to express themselves and to bring to the attention of the people of this Nation and of the world—and that is what a Senator here has the right to do—that has enabled our country to become the greatest Nation in the world.

I think we have been able to maintain our type of government, our Republic, our type of Republic, have brought about more democracy here because of that, and have made greater strides in protecting the rights of individuals than in any other country.

We have more liberty and we have more individual freedom here. Without this free debate, I don't think that would be possible.

And I don't think that simply because this administration or any other administration in the past or the future wants to get a bill through is any excuse for changing a longstanding rule that has meant so much to this Nation and the people of this Nation in maintaining our freedoms.

Senator JAVITS. Would the Senator mind just commenting upon the fact that this longstanding rule of which the Senator speaks has only been in effect for 8 years?

That in the years from 1917 to 1949 it took only two-thirds of the Senators present and voting to close debate.

Now would the Senator have any comment upon that in terms of his reference to a long-standing rule?

Senator THURMOND. Prior to that time I don't believe that rule applied, did it?

Senator JAVITS. Prior to that time there was no rule since 1806, from 1806 to 1917.

Senator THURMOND. In other words it was unlimited from that period up until—

Senator JAVITS. Until 1917.

Senator THURMOND. Until 1917?

Senator JAVITS. That is correct.

Senator THURMOND. It was unlimited altogether.

Then evidently there was some movement of some group that wanted to pass a bill and they felt the only way they could do it would be to change the rules.

I think it was a mistake. I think it would be a mistake now if we changed the rules further. I realize there are certain Senators and certain Members of Congress and certain persons in the executive branch of the Government and maybe in the judicial branch who want certain legislation passed, who even want it passed now, and they want it passed so badly that they are willing to take a step which I believe later they may regret.

I personally feel it would be a terrible mistake.

Senator JAVITS. Senator, do you feel as a practical matter—and I might point out that before 1806 there was a majority rule for closing debate, but aside from that, do you feel that we should have no limitation whatever on debate; in other words that debate could go on and on and on as long as men's physical endurance would stand it?

Senator THURMOND. I would certainly rather have unlimited debate than to have the present rule weakened any more than it is now. Under the present rule two-thirds of the Senate, which is the same number required to pass a constitutional amendment, two-thirds of the Senate can end debate, and before you are going to take a Senator off the floor, a man who represents a sovereign State and is speaking for the people of his State, and speaking to the people of the Nation and the world, it does seem that a minimum would be two-thirds of all the Members of the United States Senate; that is, 64 in number.

Senator JAVITS. Senator, I believe, if I may just interject a question of fact, that under article V of the Constitution two-thirds of those present and voting in either House may suggest a constitutional amendment.

I don't know of any provision that requires a constitutional majority of two-thirds except the Senate cloture rule, and if the Senator knows of any I would deeply appreciate his pointing it out.

Senator THURMOND. Even if the constitutional amendment did not require but two-thirds of those present and voting, I think before you would take a Senator off his feet on the floor of the Senate who is representing a sovereign State, that there ought to be at least two-thirds of the Senators who would demand that that be done.

You are sent here to represent the great State of New York, the people of New York, and you have a right to be heard, and I don't believe a majority of the Senators or two-thirds of those present ought to be sufficient to stop you from presenting your views.

I don't suppose you would want to answer a question I would ask, would you?

Senator JAVITS. I will be glad to. The Senator is a sovereign Senator.

Senator THURMOND. I was just wondering if the Senator from New York is proposing a change in this rule thinking it will help him get the civil rights bill passed.

Senator JAVITS. I will be very glad to answer that question.

It is my opinion, Senator Thurmond, that no civil rights bill is likely to pass unless there is some effort to deal with rule 22, and I was going to ask you—and I have answered your question—I was going to ask you whether you thought any civil rights bill could pass, and if so, without some change in rule 22?

Senator THURMOND. Well, if two-thirds of the Senators feel it is important enough to put cloture on, of course it would pass, or any other bill if it came up would pass.

But that is the most drastic thing you can do.

I think in the greatest deliberative body in the world, to say to a Senator you have got to sit down—and that is what the Senator would be doing if cloture is applied—

Senator TALMADGE. Would the Senator yield for a question?

Senator THURMOND. Yes, sir.

Senator TALMADGE. Would you agree with me that our National Government is a government of limited or delegated powers?

Senator THURMOND. I certainly do, and in 1787 when the deputies went to Philadelphia to write the Constitution, there were 12 States represented there. The 13th State, Rhode Island, was in the hands of the radicals and was not represented. Those deputies from those 12 States wrote this Constitution which formed the Union upon its ratification.

We had States before we had a Federal Union, and I would like for this committee not to forget that it was the States that made the Union and gave the Union its rights and powers. It was not the Union that gave the States their powers.

The Bill of Rights, which was adopted in 1789, 2 years later, formed a very essential part of this Constitution. This Constitution with the Bill of Rights provides that the Federal Government has only those powers which are specifically delegated to it by the States in the Constitution.

In other words, the Federal Government is a government of limited powers. It can only do those things where it has specific authority to do in the Constitution, and the States gave the Federal Government that power when the Constitution was written.

A State legislature or a State can take any action it pleases so long as it does not interfere with the Constitution. It is just the reverse. The Congress can do only those things where it has specific power under the Constitution to do. A State legislature can enact matters on any subject so long as it does not run crosswise to the Constitution.

Senator TALMADGE. Will you yield at that point, Senator?

Senator THURMOND. Yes.

Senator TALMADGE. Do you think for that reason that any so-called cloture or gag rule in the United States Senate ought to be much more liberal than any cloture or gag rule in any legislature of any sovereign State?

Senator THURMOND. Why I think for that and other reasons too that of all places that the United States Senate should be the last place to limit debate. This body, as I said, has been known throughout the world as the greatest deliberative body of any government that has ever been founded by man.

We have the only government of this type that exists today, this tripartite system of government. Each is supposed to be a check and a balance on the other.

No other country has this type of government, and it is simply because our forefathers came here trying to form a government to get rid of tyranny, and it seems that every year that passes we are concentrating more and more power in the Central Government, which in the end, if we continue, is going to lead us right back to the type of government that our forefathers were trying to get away from, because where you have strong power in a central government, you have eventually a dictatorship, and we don't want that to happen here.

Senator JAVITS. Senator Thurmond, you would agree, however, that the Senate should have capability for acting, and that no right of debate should prevent the Senate from acting, and what do you say to the proposition that the Senate has been prevented from acting on a major question, the question of civil rights, by this filibuster rule?

Senator THURMOND. I think the Senate should have the right to act, but I think before you take a Senator off of his feet who is representing a State, and the States made the Union or there would not be any Union, gave it its powers which it holds, that at least two-thirds of the Senators, 64 Senators should be required.

Otherwise I don't think a Senator should be required to stop his debate on the floor of the Senate.

Senator JAVITS. Senator, may I point out that you can expel a Senator let alone take him off his feet with two-thirds of those present and voting under article I, section 5 of the Constitution.

Now article 22 is not constitutional. It is a rule of our own body. Why should it be any tighter than the majority required to expel a Senator?

Senator THURMOND. You have a successor if you take him off. The State would send another one here. But still principles are greater than individuals. An individual can go out of the picture, but the principle is the thing I think we have got to look to.

I think the principle of free debate is something that should not be hampered.

Senator JAVITS. Now the Senator does not believe—and this is my last question, I did not want to detain the Senator very long—the

Senator does not believe therefore that 15 days debate plus 96 hours, which would be the situation under the so-called Douglas resolution, is adequate debate upon a subject, is that correct?

Senator THURMOND. I would not say that it is on some subjects. On some subjects which would vitally affect the rights of the individuals of this country, which vitally concern the freedom of the individual, which destroys powers that are given to us under our Constitution, it seems to me that 15 days is not enough, and that 30 days might not be enough. There are times when people, in order to accomplish a certain motive or purpose, are willing to take steps that later they will drastically regret, simply to attain their immediate goal, and it may take indoctrination of the country, it may take information to go to the citizens of the Nation to inform them of what is being done, and sometimes you can't do it in a few hours or a few days, and maybe 15 days would not be sufficient.

Senator JAVITS. Would the Senator favor any rule by which a constitutional majority of the Senate could make a Senator stop debating when he was just engaging in a pretense of debate and had fully explored the subject in the view of that majority?

Senator THURMOND. I think that becomes a matter of opinion as to whether he is engaging in a pretense.

That is putting one Senator's opinion against another.

I think it would be a great mistake to change the rule that would weaken rule 22, that it would be a great mistake to take any step that would weaken rule 22 that requires two-thirds of the Members of the Senate to take a Senator off of his feet and say to him, "You can't talk any longer although you are a Senator of a sovereign State of this Nation."

Senator JAVITS. As a practical matter, Senator Thurmond, it is one of degree, isn't it? You have now got two-thirds of the constitutional membership, so anything less than that is a question of degree.

The principle is settled, wouldn't that be so?

Wouldn't you agree with that?

Senator THURMOND. I did not hear that question.

Senator JAVITS. I said, Senator Thurmond, just by way of a summary, wouldn't you agree that we are discussing now a matter of degree, no longer of principle?

So long as you can have any cloture at all, the question of how many can enforce it becomes one of degree, not of principle, would you agree with that?

Senator THURMOND. Well, it is a form of degree in a way, but I think if you make it any less of a degree than it is now it will be a terrible mistake that you—even the great Senator from the State of New York—would regret for years to come.

Senator JAVITS. You are very kind, Senator Thurmond, and I feel the same way about you as a Senator from your great State.

Senator TALMADGE. Thank you very much, Senator.

We will be glad to have you with us at any sessions you care to attend.

Senator THURMOND. Thank you very much, Mr. Chairman, for your courtesy.

Senator TALMADGE. Are there any other Senators who wish to be heard either personally or by statement?

In that connection I might say that several Senators have told me of their desire to be present and testify. They stated they could not

come on such short notice. I do have a letter from the junior Senator from Virginia, Hon. A. Willis Robertson, that I ask permission to insert in the record.

(The statement of Senator Robertson is as follows:)

STATEMENT OF HON. A. WILLIS ROBERTSON, A UNITED STATES SENATOR FROM
THE STATE OF VIRGINIA

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
June 15, 1957.

HON. HERMAN E. TALMADGE,
HON. JACOB K. JAVITS,
United States Senate, Washington, D. C.

DEAR COLLEAGUES: Thank you for your letter of the 14th in which you offer to me the privilege of appearing before your special subcommittee of the Committee on Rules and Administration next Monday to make a statement, if I am so inclined, concerning proposals to change rule 22 of the Standing Rules of the Senate.

I regret that an important meeting of the Appropriations Subcommittee on Public Works on Monday will prevent me from appearing before your committee. All that I would like for your record to show is that, in my opinion, there is no good and sufficient reason to change rule 22. Since neither of you were Members of the Congress when the agitation first started in the Senate for changing rule 22, I wish to remind you the change was sponsored by those who were sponsoring so-called civil rights bills and who believed that prompter action could be secured in the Senate if debate on any bill could be limited by a simple majority of those present and voting. But such a proposal overlooks the rights which minorities should have, as explained by Thomas Jefferson who prepared the first Senate manual, as well as the fact that the proponents of the change have been unable to show that the right of extended debate given to minorities under rule 22, has ever in the long run prevented the passage of any legislation which had the support of a clear majority of the American people.

With best wishes, I am,
Sincerely yours,

A. WILLIS ROBERTSON.

Senator TALMADGE. I have a letter from Senator Olin D. Johnston of South Carolina which will be inserted in the record immediately after the other Senators' statements.

(The statement of Senator Johnston is as follows:)

STATEMENT OF HON. OLIN D. JOHNSTON, A UNITED STATES SENATOR FROM THE
STATE OF SOUTH CAROLINA

UNITED STATES SENATE,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
June 17, 1957.

HON. HERMAN E. TALMADGE,
*Chairman, Special Subcommittee of the Committee on Rules and Administration,
Senate Office Building, Washington, D. C.*

DEAR HERMAN: This morning you are holding a special hearing on proposed changes in Senate rule XXII (cloture rule) to hear from members of the Senate. Unfortunately I will be tied up in the Senate Judiciary Committee on civil rights legislation which I feel is of great importance to all of us, and therefore it is impossible for me to attend your committee hearing as much as I would like to do so.

For purposes of brevity may I refer you to volume 94, part 4 (1948), pages 5219-5230 and 5283-5294, and volume 95, part II (1949), pages 2490-2724, of the Congressional Record. In this you will find prolonged debate regarding a similar proposal for changing this rule in the Senate back in 1948, at which time I opposed this change at length, as did a majority of the Senate. In my opinion we were most fortunate in preserving this rule of unlimited debate.

Nowhere else in the entire world is there a deliberative body dealing with such important affairs as our security, peace for future generations, atomic power, etc., wherein the members representing their constituents have totally free and unlimited debate. In my opinion it would be a terrible blow to the free world's morale for us to censure ourselves with proposals now before the Senate.

During World War I the late Senator Bob LaFollette of Wisconsin, one of the great liberals and progressives of his ago, said the following when an attempt was made to impose cloture in the Senate at that time:

"I realize how the hysteria of the moment may be driving Senators to acquiesce here in this procedure which at another time they would resist with all their force. But so far as I am concerned I will never by my voice or vote consent to a rule which will put an end to freedom of debate in the Senate. The adoption of this rule marks a decline in the influence of the Senate in the Government. I know that the majority are determined. I believe that a majority of that majority are in this matter yielding their judgments, and that the time will come when the men who are now clamoring for this change and who by their votes are imposing cloture upon the Senate will see that rule invoked to deprive them and their States of what they deem their rights. I cannot prevent the adoption of this rule, so I am content at this time to protest and vote against it."

I believe the foregoing words are just as timely and stand up just as well today as they did then.

In January of this year, when we were debating whether or not the Senate was a continuing body, I stated that the Senate of the United States is the last citadel of man's freedom. This right of free discussion affords me and every other Member of the Senate the opportunity to fight in defense of some fundamental principle or to prevent the destruction of some basic right. Without such a rule of unlimited debate in the United States Senate, we would all become the prey of hysteria and minority rights could exist only in theory and not in fact. It is ironic that those who favor abolishing unlimited and unrestricted debate exercise such a right more freely and more often than do a great deal of us who sometimes are referred to as being reactionary or conservative for opposing changes in rule XXII.

I sincerely hope that your committee will recommend no such change and will put into your report the basic principles upon which this rule was founded and why it should remain untampered in ages to come and will perhaps end forever recurrence of attacks upon it.

If I may be of any further assistance to your committee, please do not hesitate to call upon me, and may I ask you to include this letter as a part of your official report.

With kind regards, I am
Sincerely yours,

OLIN D. JOHNSTON.

Senator TALMADGE. I also have a statement from a former Vice President of the United States which is a right interesting one.

On May 10 I wrote former Vice President John Nance Garner. In keeping with his well-known ability for getting right to the point he penciled at the bottom of the letter:

DEAR SENATOR TALMADGE: I favor free and unlimited debate in the Senate.
Sincerely,

JOHN N. GARNER.

May 15, 1957.

I ask unanimous consent to insert that in the record.
(The letter to Mr. Garner and his reply may be found in the appendix as part of exhibit 3, p. 360.)

Senator TALMADGE. Are there any more statements of Senators?
Do you have any insertions at this time?

Senator JAVITS. Mr. Chairman, I was just going to make the suggestion that we confine the opportunity to our colleagues to testify to one succeeding hearing, inviting those who can't appear to submit written statements so we can get on with the other witnesses who desire to be heard.

I think having extended the opportunity for two hearings, I know our colleagues will all have a chance to speak to this on the floor, and I would say this to the Senator:

If any others of our colleagues desire to be heard after we have concluded that phase of the hearings, which I suggest be Friday, why

we will of course hear them, but I thought that we would begin on Monday next, that is a week from today, to hear witnesses other than Senators.

I make that suggestion.

Senator TALMADGE. With the proviso that any Senator may be heard at any time.

Senator JAVITS. Thereafter, exactly.

Senator TALMADGE. I certainly would not want to close the door to Members of the Senate wishing to testify as to a rule they will be operating under, and I know there is considerable interest in the Senate, both in support of one or the other of these amendments as well as in opposition thereto.

In fact, several have personally told me they want to be heard. I would certainly be very strongly in favor of giving them that opportunity.

Now, are there any witnesses present who desire to testify?

Senator JAVITS. Mr. Chairman, I had one other suggestion and that is the next week we have three hearings, and I would suggest Monday, Tuesday, and Friday, Wednesday being a Rules Committee day.

Senator TALMADGE. There is no objection on my part at all. I think we ought to bear this in mind: Last week for the first time we started working night and day in the Senate. It is likely that the pace is going to get even faster than that in the future, and at our hearings it sometimes may be absolutely impossible for you, me, or any other Senator to be present to hold these hearings. For that reason I think the situation is going to have to remain quite flexible for the time being.

I think we will have to hold hearings whenever we can do so, and I for one would share the Senator's view.

I would be perfectly willing to attend hearings at any time that my duties in the Senate will permit.

Is Mr. Harold L. Putnam here?

He is executive secretary of the National Society of Sons of the American Revolution.

If he is not here or any other witnesses who desire to be heard personally, I have several statements that I would like to insert in the record at this time.

A letter from Mrs. Edgar S. Block, secretary of the American Flag Association of the United States.

Letter from J. D. Henderson, of the American Association of Small Business.

Letter from Mark Fakkema, educational director of the National Association of Christian Schools.

Letter from H. B. Franklin and R. M. Dickinson, of the American Legion, Sauls-Bridges Post, No. 13, Tallahassee, Fla.

Letter from Sherman A. Patterson, general manager of the Christian Citizens Crusade, Inc.

Letter from Willis Carto, executive director of Liberty and Property, San Francisco, Calif.

Letter from W. R. Beatty, of Citizens United, Inc., Los Angeles, Calif.

Letter from Leslie E. Gehres, of the San Diego Constitutional Foundation.

Letter from Walter S. Steele, editor and manager of the National Republic.

Letter from Mrs. Gerald O. Inman, director of national defense, Iowa Chapter, National Society of Huguenots.

Letter from Mrs. Gerald O. Inman, American Constitution Party of Iowa.

Letter from Mrs. Gerald O. Inman, director general, National Society of New England Woman.

Letter from Mrs. Gerald O. Inman, national historian of the National Society of Children of the American Colonists.

Letter from Mrs. Gerald O. Inman, Iowa State president of the National Society United States Daughters of 1812.

Letter from Mrs. Mary D. Cain, national chairman, of Individuals for Freedom.

Letter from Verne P. Kaub, president of American Council of Christian Laymen.

Letter from Mrs. J. J. McLaughlin, chairman of the Defenders of American Education.

Letter from Mrs. Helen P. Lasell, national chairman of the United States Flag Committee.

Letter from William D. McCain, of the Sons of Confederate Veterans.

Letter from Mrs. Gwen M. Schofield, of the Committee for America.

Letter from Ross K. Cook, commander general of the Military Order of the Crusades.

Letter from Percy Hamilton Goodsell, Jr., president-general of the Descendants of the Signers of the Declaration of Independence.

Letter from Mrs. Leigh F. Birkeland, acting chairman, California chapter of the Minute Women of the United States of America, Inc.

Letter from F. A. Lydy, president of United Neighbors, Inc.

Letter from Donald MacLean of Hollywood, Calif.

Mrs. James J. O'Connor, of Granada Hills, Calif.

Letter from Dr. Harvey B. Stone, of Baltimore, Md.

Letter from Mrs. John S. Inman, of Jacksonville, Fla.

Letter from Mrs. Edith H. Moore, Crozet, Va.

Letter from Mrs. Betty E. Covey, Crozet, Va.

Letter from Julius F. Prufer, associate professor of political science and alumni director of Roanoke College.

Letter from Mrs. John W. Daniel, of Houston, Tex.

Statement from P. C. King, Jr., president, Georgia State Society of the Sons of the American Revolution.

Letter and resolution of the Small Property Owners' Association.

Resolution from Florida States Rights, Inc., of Miami, Fla.

Resolution from United Mothers of America, Inc.

Resolution from the executive committee of the Western Tax Council, Inc.

Resolution from the Alabama Council of the National Society of Patriotic Women of America, Inc.

Resolution from the National Society of New England Women.

Senator JAVITS. May I suggest the Chair insert in the record preceding the letters submitted from citizens and organizations the text of the letter which was sent to these citizens and organizations?

Senator TALMADGE. No objection at all on my part.

Senator JAVITS. That should go in because they say "In answer to your letter of so-and-so," practically all of them.

Senator TALMADGE. You just want the text?

Senator JAVITS. Whatever text went to them all.

Senator TALMADGE. We can insert Mr. Garner's letter first and his reply and then the following letters received.

Mr. HARRISON. I suggested the use of the Garner letter because he sent the letter back with the handwriting at the bottom.

(The letter received from former Vice President Garner may be found in the appendix as part of exhibit 3, p. 360.)

Senator TALMADGE. And I have also a petition signed by a number of citizens of the State of Florida.

Senator JAVITS. Mr. Chairman, I ask unanimous consent that the text of the petition be printed together with the first name.

Is that the normal practice, Mr. West?

Whatever is the normal practice.

Senator TALMADGE. No objection if you state a name and the number of other signatures affixed.

(The petition referred to may be found in the appendix as part of exhibit 4, p. 363.)

Senator TALMADGE. We have just been notified that Mr. Harold L. Putnam will be here at 11 a. m. While I do not know of any authority that has been granted to this committee to sit at that time, I have no objections.

Senator JAVITS. I have none, Mr. Chairman.

Senator TALMADGE. Are there any other communications?

Senator JAVITS. Mr. Chairman, about this 11 o'clock we have to get consent. I am happy to seek it.

Senator TALMADGE. There is no objection at all on my part.

Mr. West, will you call the Majority Leader's office and tell him that Senator Javits and I would like permission to sit at 11 o'clock to hear one witness?

(Short recess.)

Senator TALMADGE. Mr. Putnam, will you have a seat, please? Sit anywhere that you are most comfortable.

This is Senator Javits from New York. I am Senator Talmadge of Georgia. This is the subcommittee which is taking testimony relating to amending Senate rule XXII. We will be happy to hear from you at this time if you are ready, sir.

Whom do you represent?

STATEMENT OF HAROLD L. PUTNAM, EXECUTIVE SECRETARY, NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOL- UTION

Mr. PUTNAM. My name is Harold L. Putnam, executive secretary of the National Society of the Sons of the American Revolution.

Senator TALMADGE. Proceed.

Mr. PUTNAM. Our interest in this particular matter is based on our overall policy, being very sure that we do everything possible to safeguard the constitutional rights of every individual.

Our interpretation of any proposal which would limit the debate in the Senate is we believe in a broad sense a certain infringement on the rights of free speech as set forth in the first amendment.

I have just returned from the 67th Annual Congress of our society, which was held in Salt Lake City, and on the 29th day of May we adopted a resolution of which I have 1 or 2 copies here which I will be glad to turn over to the committee.

This resolution was adopted by the 67th annual congress, National Society of the Sons of the American Revolution meeting in Salt Lake City, Utah, on May 29, 1957, and the resolution is entitled "To Maintain Free Debate in the Senate."

Senator TALMADGE. Without objection, the resolution will be inserted at this point in the record.

(The resolution referred to is as follows:)

Whereas maintenance of freedom of debate in the United States Senate performs the same essential function as freedom of the press, under the first amendment, in keeping the people fully informed in respect to matters which may vitally affect their freedom and the security of constitutional rights.

In recent years various attempts have been made to bring about the enactment of restricted rules in the Senate of the United States which may endanger freedom of discussion in that House of Congress.

We recognize the possibility of abuse of the right of free debate in the Senate, just as we know that freedom of the press is, at times, abused.

The alternative, which is control of debate, and may lead to a condition equivalent to censorship, is too dangerous to be seriously considered: Now, therefore, be it

Resolved, That we express our unalterable opposition to the enactment of any rule in the Senate which will substantially alter the right to freedom of discussion secured by Senate rule XXII.

We call upon the Rules Committee of the Senate to protect this essential right when acting on pending proposals relating to the change of that Senate rule.

Foregoing resolution adopted by 67th annual congress, National Society of the Sons of the American Revolution, meeting in Salt Lake City, Utah, May 29, 1957.

Mr. PUTNAM. That was adopted unanimously.

Senator TALMADGE. For the record, what is the Sons of the American Revolution?

Mr. PUTNAM. The Sons of the American Revolution is an organization of men, descendants of those who served in the establishment of our country.

Senator TALMADGE. In other words those men who fought under George Washington?

Mr. PUTNAM. That is right.

Senator TALMADGE. How many members do you have?

Mr. PUTNAM. At the present time we have 19,000 members organized in 48 States, the District of Columbia, Hawaii, Alaska, and a society in France.

Senator TALMADGE. Do you have an affiliated women's group, too?

Mr. PUTNAM. We do not. The Daughters of the American Revolution are entirely a separate organization. There happens to be a very close friendly relationship and cooperation, but we are not actually affiliates in any real sense.

Senator TALMADGE. No further questions.

Senator JAVITS. Mr. Putnam, are you aware of the fact that there is a limitation of debate in the Senate now?

Mr. PUTNAM. We are aware of the fact that there is some limitation.

I confess I am not thoroughly familiar with all of the rules under which you are operating at the present time, sir.

Senator JAVITS. Before your members adopted this resolution, was any speech made for and against this proposition developing the facts?

Mr. PUTNAM. There were some speeches made in favor but there were none against.

Senator JAVITS. None against?

Mr. PUTNAM. No.

Senator JAVITS. If you don't know, Mr. Putnam, do you think your members know whether there is any limitation of debate in the Senate?

Mr. PUTNAM. Yes, because our chancellor general in bringing this matter before the congress made some mention of that.

I do not have the exact record of what he said, but I recall that there was some mention made of it—that there was some limit of debate at the present time.

Senator JAVITS. Mr. Putnam, do you believe that there is free speech in the House of Representatives?

Mr. PUTNAM. I don't know that I could say that I conscientiously believe that. I believe there have been some attempts in recent years to limit some of our free speech up and down the line at various places; yes, sir.

Senator JAVITS. Do you believe as a fact that there is or is not free speech in the House of Representatives?

Mr. PUTNAM. I don't know that I would be able to say that I believe that there is. I am not sure that I would be prepared to say that I believe there is unlimited free speech in a complete sense.

Senator JAVITS. Do you consider the only kind of speech that is free to be unlimited?

Mr. PUTNAM. As we stated in our resolution, Mr. Javits, we recognize that there is going to be some abuse of that privilege the same as there is abuse of the privilege of freedom of the press and freedom of speech in our everyday life. There is bound to be some abuse, but on the other hand we feel that any curtailment of the privilege would result in greater harm than the abuses which are being practiced.

Senator JAVITS. Do you believe that your organization desires a situation by which debate can stop a measure from being voted on at all?

Mr. PUTNAM. We don't subscribe to an idea that any measure perhaps might not be voted on at all. That comes under the exact thing that we said we recognize there is likely to be some abuse of.

Senator JAVITS. Do you believe, therefore, that it would be consistent with your resolution for the Senate of the United States to consider what limitations are needed in order to enable it to vote?

Mr. PUTNAM. Isn't it true, sir, they have some limitations today?

Senator JAVITS. I say they do but I am asking you the question: Do you feel your organization would feel that therefore the Senate of the United States has a right to determine what limitation it ought to impose so that it could vote when it thought it ought to?

You would not consider that an abridgment of the right of free speech, would you?

Mr. PUTNAM. That would be a question that would be decided by—how that limitation was determined, I think.

I would not want to answer that as a blanket question, no.

Senator JAVITS. Have you studied the bills which are before this committee?

Mr. PUTNAM. Personally?

Senator JAVITS. I am just speaking to you as a representative of your organization, sir.

Mr. PUTNAM. I have not personally studied the bills particularly. I have only just casually read them.

Our chancellor general, who is an attorney and practices before the Supreme Court, has made quite a study of it, sir.

Senator JAVITS. Do you interpret that resolution as being against all the bills which are before us?

Mr. PUTNAM. That might not necessarily apply, no. We stated our belief in the general principle. When you try to pin it down to some specific bill, I think that will be a little difficult for us to pin it down because, not being familiar with all of the bills as you stated, sir, I would not be in a position to make that statement clearly.

Senator JAVITS. One other thing, Mr. Putnam.

I don't want to detain you any longer. We are trying to get all the information we can.

I understand your position, and I respect it, though I don't agree with it.

Has your organization taken any position against any of the so-called civil rights bills, that is the antilynching, antipoll tax, FEPC bills, or the President's civil rights program?

Mr. PUTNAM. No, sir; we have not. May I state on that question—you have raised a question which I think I am entitled to make our position very clear on——

Senator JAVITS. Please.

Mr. PUTNAM. We very carefully refrain from things that we believe are highly political controversial matters. We believe when there is strictly a matter of constitutional right involved, then we have a right to make our opinions known without being accused of entering into politics.

Senator JAVITS. Now, Mr. Putnam, do you believe that your organization adopted this resolution which you have read to us under the belief that it was not highly controversial and highly political?

Mr. PUTNAM. We do not believe it is highly controversial and political because we believe there is a fundamental constitutional law involved there and we believe we have a right to be heard on that.

Senator JAVITS. And do you not believe there is an equal question of fundamental constitutional law involved in the so-called civil rights bills that I have described to you?

Mr. PUTNAM. That is something that we do not participate in.

We do not believe it is our prerogative to express our opinions on that one.

Senator JAVITS. I don't want to press you, sir, but I would like to get an answer to the question because it enables us to evaluate what your people did.

Does your organization—or do you, it is probably much fairer to ask—do you believe that there is a constitutional question involved in the civil rights bills, at least equivalent to the constitutional question involved in the resolution you have just read?

Mr. PUTNAM. No, I do not.

Senator JAVITS. You do not?

Mr. PUTNAM. No, sir.

Senator JAVITS. Thank you, that is all.

Senator TALMADGE. Mr. Putnam, each State in the Union has two Senators, doesn't it?

Mr. PUTNAM. Yes, sir.

Senator TALMADGE. Regardless of size?

Mr. PUTNAM. That is correct.

Senator TALMADGE. Senator Javits' State of New York has approximately 14 million population.

Senator JAVITS. Seventeen million, Mr. Chairman. We have grown.

Senator TALMADGE. Seventeen million. Nevada has, I believe, only about a quarter of a million. Yet they each have two Senators.

Now the House of Representatives is apportioned according to population, isn't it, so there would exist some very strong reasons for a difference in rules between the House of Representatives and the Senate, would it not?

Mr. PUTNAM. I think so.

Senator TALMADGE. Do you think the reason each State has two Senators is because they are representing sovereign States in the United States Senate?

Mr. PUTNAM. That is the theory, I believe.

Senator TALMADGE. Any further questions?

Senator JAVITS. I just had one other question I would like to ask you, Mr. Putnam, if I may, and that is whether or not your organization, when it passed this resolution, understood that it was or was not a highly controversial political question?

Mr. PUTNAM. I think they understood it was a highly controversial question.

I can't agree with you we considered it a political question.

Senator JAVITS. And you feel it is different from the civil-rights bill?

Mr. PUTNAM. We do.

Senator JAVITS. Thank you.

Senator TALMADGE. Anything further you wish to state, Mr. Putnam, or insert in the record?

Mr. PUTNAM. No. I think that I have stated the position of our society on this matter very clearly.

Senator TALMADGE. Thank you very much.

We appreciate your coming and I would ask that Senator Javits' assistant and my assistant get in touch with Mr. West to make arrangements for 6 or 8 witnesses for next Friday.

We stand recessed until Friday Morning at 10 a. m.

(Whereupon, at 11 a. m., the subcommittee was adjourned, to reconvene at 10 a. m., Monday, June 24, 1957.)



PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE

MONDAY, JUNE 24, 1957

UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:05 a. m., in room 457, Senate Office Building, Senator Herman E. Talmadge (chairman of the subcommittee) presiding.

Present: Senators Talmadge and Javits.

Also present: Langdon West, special counsel to the subcommittee; Darrell St. Claire, professional staff member; Robert S. McCain, professional staff member; and Sidney Kelly, Jr., administrative assistant to Senator Javits.

Senator TALMADGE. The subcommittee will come to order.

I understand that Senator Douglas will be here this morning. Senator Case will be here tomorrow as, I believe, will Senator Stennis.

We have several statements from Senators and others which we will insert in the record at this time, without objection.

Senator JAVITS. Are there statements from Senator Anderson and Senator Clark?

Senator TALMADGE. We have statements from Senators Smith, Bush, and Payne. Those seem to be all the communications we have from Senators.

(The statements of Senators Smith of New Jersey, Bush, and Payne are as follows:)

STATEMENT OF HON. H. ALEXANDER SMITH, A UNITED STATES SENATOR FROM THE STATE OF NEW JERSEY

In supporting a revision of the present provisions of rule XXII of the Standing Rules of the Senate, I wish first to make two points clear.

I believe in the maximum freedom of speech in the Senate. I think it of utmost importance that the Senate discuss every question fully and completely without being limited by rules such as prevail in the House.

I also do not believe that we should adopt any rule under which a majority alone could control the debate. I think it is extremely important, when major issues arise, that we avoid any possibility of the majority being able abruptly to force a vote without allowing reasonable debate. There must be the opportunity for full debate.

However, I do believe that the present rule is too rigid to be of any practical value. I do not think that the Senate should operate under rules which virtually preclude a preponderant majority of the Senate from proceeding, after a reasonable period of debate, to bring a pending question to a vote. We should not leave ourselves completely at the mercy of a determined minority.

The present rule provides that an affirmative vote of two-thirds of the Senators duly chosen and sworn is necessary to apply cloture to debate, and that

cloture shall not lie against a motion to proceed to the consideration of a proposed change in the rules. I believe that the rule should provide for cloture by a vote of two-thirds of those Senators present and voting, and that cloture should lie against all motions, including those to bring up for consideration a proposed change in the rules.

I urge your committee to recommend revision in rule XXII which will accomplish such changes.

STATEMENT OF HON. PRESCOTT BUSH, A UNITED STATES SENATOR FROM THE
STATE OF CONNECTICUT

UNITED STATES SENATE,
COMMITTEE ON ARMED SERVICES,
June 19, 1957.

HON. HERMAN E. TALMADGE,
*Chairman, Special Subcommittee,
Committee on Rules and Administration,
United States Senate, Washington, D. C.*

DEAR SENATOR TALMADGE: The need for an effective method of curbing filibusters in the Senate has been so amply demonstrated, and discussed at such length in the past, that it would seem that further testimony on the subject would be painting the lily.

On January 9 of the present session, I introduced Senate Resolution 32, which proposes to modify rule XXII as follows: (1) Lengthen the time limit between the filing of a cloture motion from 1 to 5 days (exclusive of Sundays and legal holidays); (2) permit cloture to be invoked by two-thirds of those Senators present and voting, instead of two-thirds of the Senators duly chosen and sworn; and (3) eliminate subsection (3) of the present rule which, in effect, prohibits limitation of debate on a proposal to amend the Standing Rules of the Senate.

These changes, in my judgment, are the minimum which should be made. While I believe that extended debate should be permitted in the Senate as a safeguard against overhasty action, it is intolerable that our prized freedom of speech should be perverted into a weapon to club down the rights of a majority.

I trust that your subcommittee will not permit its current hearings to be made the subject of a filibuster against proposals to curb the filibuster. It is essential, in my judgment, that this issue be brought to the floor as soon as possible in order that a decision can be made by the Senate.

It is respectfully requested that this letter be printed in the record of the hearings.

Sincerely yours,

PRESCOTT BUSH,
United States Senator.

STATEMENT OF HON. FREDERICK G. PAYNE, A UNITED STATES SENATOR FROM
THE STATE OF MAINE

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
June 17, 1957.

HON. HERMAN E. TALMADGE,
HON. JACOB K. JAVITS,
*Committee on Rules and Administration,
United States Senate, Washington, D. C.*

DEAR SENATORS: Many thanks for your letter of June 14 inviting me to appear before your special subcommittee of the Committee on Rules and Administration. Since my doctors are still holding my activities to a minimum, it will be impossible for me to appear much as I should like to do so. However, I want to take this opportunity to briefly set forth my views on the questions raised by Senate rule XXII.

When we consider democracy in its purest form, unlimited debate is usually included among its primary tenets. However, democracy, with unlimited debate on all issues is liable to many abuses not the least of which is obstructionism. If some means could be devised whereby the obstructionist could be prevented from using unlimited debate for his own purposes, then the problem would be solved, but experience indicates that this is a practical impos-

sibility. Here in the Senate the abuse of unlimited debate by small but vocal minorities has in many cases blocked the will of the majority. It is not the function of a self-designated minority to hold the majority perpetually at bay through the use of the filibuster, no matter how repugnant the will of the majority may be to this minority.

I would appreciate having these comments included as part of the record of the hearings which your subcommittee is conducting and you may be certain that I shall be deeply interested in your findings on this vital matter.

With very best regards,

Sincerely yours,

FREDERICK G. PAYNE,
United States Senator.

Senator TALMADGE. I also have a communication from Mr. Kenneth M. Birkhead, executive director, American Veterans Committee; a statement from Mr. Eustace Mullins, director, Realpolitical Institute, Chicago, Ill.; a letter from Mrs. R. R. Lowdon, secretary, Fort Worth chapter of Pro America; and a petition from the Florida States Rights, Inc., group.

Without objection, we will insert all of those in the record.

(The statements and petition referred to may be found in the appendix, in exhibits 2 and 4, respectively.)

Senator JAVITS. Mr. Chairman, I would ask unanimous consent that the statements of Senators, of which there will probably be quite a number, be included in the body rather than the appendix of the record.

Senator TALMADGE. Yes; I agree that all statements from Senators should be included in the body of the record.

Senator Douglas, we are very happy to have you here before us, and we will be delighted to have you make a statement to us.

STATEMENT OF HON. PAUL H. DOUGLAS, A UNITED STATES SENATOR FROM THE STATE OF ILLINOIS

Senator DOUGLAS. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before the special subcommittee of the Senate Rules Committee in support of Senate Resolution 17, which I introduced in behalf of myself and 13 other Senators--Mr. Ives, Mr. Murray, Mr. Humphrey, Mr. Morse, Mr. Hennings, Mr. Chavez, Mr. Jackson, Mr. Potter, Mr. McNamara, Mr. Case, Mr. Neuberger, Mr. Carroll, and Mr. Clark--to amend Senate rule XXII to provide a workable method of limiting debate after opportunity is given for full consideration of any measure pending before the Senate.

I also welcomed the willingness of the Senator from New York, Mr. Javits, to join us as a sponsor of this proposal shortly after he was sworn in, a few days after the introduction of the resolution.

I deeply believe that this change in the Rules of the Senate, which have in the past permitted unlimited debate, or a filibuster, to defeat majority rule and prevent the Senate even from voting on essential legislation, is one of the most urgently needed measures before the Senate today.

Briefly, Senate Resolution 17 provides first that limitation of debate may be effected by a vote of two-thirds of the Senators present and voting 2 calendar days after a petition signed by 16 Senators has been presented to the Senate.

It further provides that debate may be limited by a majority vote of those Senators "duly chosen and sworn," namely, by 49 of the 96 Senators, 15 calendar days—excluding Sundays and legal holidays—after a petition is presented by 16 Senators.

Senate Resolution 17 retains the provision of the present rule allowing each Senator 1 hour for further debate after the limitation is voted.

Senate Resolution 17 repeals section 3 of present rule 22 which provides that there may be no limitation at all on a motion to proceed to the consideration of a change in the rules of the Senate.

In effect, then, since limitation would not be invoked until after several weeks of debate, except in a national emergency, Senate Resolution 17 would permit limitation by a two-thirds vote after 2 to 3 weeks of consideration, and limitation by 49 votes after about 4 to 5 weeks of debate.

I think perhaps I should emphasize that point: that unless we had a grave situation like that of 1917, with the international situation in a highly critical condition where delay might be fatal to national security, and unless there were a small group of Senators nevertheless determined to hold out against a policy which the vast majority of the country believed to be wise, that except in a situation such as that, no one, I am sure, would dream of presenting a cloture petition until after the debate had gone on for a considerable period of time. And assuredly the required 16 Senators could not be found to sign such a petition short of that reasonable period.

In other words, the debate would be allowed to proceed for at least 2 or 3 weeks, I think, under the general rule and practice of the Senate, before the cloture petition was even started; and then, according to Senate Resolution 17, it would require a vote of two-thirds of the Senators present and voting, 2 days after the presentation of the petition, to limit the debate. In essence, this is the original 1917 cloture rule.

Thus in practical terms you would still require a two-thirds vote after 2 to 3 weeks of consideration. Then 15 days would have to elapse after the filing of the petition before cloture could be invoked by a majority, and that would provide 4 or 5 weeks of debate, I would say, at a minimum. Then the required majority would not be a majority of those voting, but a majority of those duly chosen and sworn, or you would need 49 affirmative votes.

In other words, our purpose is to permit full discussion, which we believe to be essential, and prolonged debate, but not to permit a relatively small minority to prevent a vote from occurring.

Senator JAVITS. Would the Senator yield at that point?

Senator DOUGLAS. Certainly.

Senator JAVITS. The 15 days would exclude Sundays and holidays?

Senator DOUGLAS. That is right.

Senator JAVITS. So it would be more than that.

Senator DOUGLAS. That is absolutely true. It would be at the very least 17 days, 2½ weeks, and might be more.

Senator JAVITS. Well, the Senator's views are very well known, and the Senator has been one of the most stalwart advocates of some revision in the Senate rules, and I would like to ask the Senator this question.

I am relatively new here, and I have been told that this effort is not a very popular one among Members of the Senate, and that it is with considerable temerity that any new Senator would undertake to deal with such a long-established practice of the Senate.

Now, the Senator has been here for a considerable number of years. Would the Senator care to make any comment upon that question as to—

Senator DOUGLAS. Yes.

Senator JAVITS (continuing). As to the inviolability of this rule 22?

Senator DOUGLAS. Yes.

It will be noticed that there are 15 of us, including yourself, who are sponsors of Senate Resolution 17. Now, I understand that there are some 39 other Senators who are sponsors of other proposals to lessen the severity of rule 22. So that I would say that a majority of the Senate, so far as the sponsorship of bills is concerned, have already gone on record in support of some lightening of the present very severe restrictions on limiting debate.

Senator JAVITS. Does the Senator regard, or does not the Senator agree with me, that there is considerable imminency in this matter now. With the civil rights bill on the calendar, we are looking right into the teeth of the filibuster?

Senator DOUGLAS. Oh, yes. This is not an academic question, and never has been an academic question, and it is a very practical question now, after Senator Ellender's statement on the radio this weekend, as reported in this morning's press.

I would like also to point out that under this proposal, Senate Resolution 17, even after cloture is invoked, each Senator is allowed an additional hour, so that we could have an additional 24 hours of debate if each Senator utilized his allowed time.

Senator JAVITS. Ninety-six hours.

Senator DOUGLAS. Pardon me, did I say 24?

Senator JAVITS. You said 24.

Senator DOUGLAS. Ninety-six hours, or 24 hours a day for 4 days if the Senate met around the clock.

Senator JAVITS. I am sorry to have interrupted you.

Senator DOUGLAS. That was my fault.

Senate Resolution 17 would thus guard the rights of minorities to full discussion. But it would make it possible after a reasonable time for the Senate to reach a vote. And the handcuffs on any future rule changes, in section 3 of present rule 22, would be stricken off. The proposal does not go as far as some advocates of majority rule have proposed. But I believe it presents a workable compromise which we should adopt.

Some people have advocated a majority cloture rule by a majority of those present and voting. We provide, even in the ultimate, for a majority of those chosen and sworn, or for a so-called constitutional majority of at least 49.

Some have thought that the majority principle should be invoked at an earlier stage in the discussion. We put it off for a longer period of time. So that I think that our proposal represents a workable compromise which the Senate should adopt.

This winter I was invited to deliver an address at Ohio State University, and I took the opportunity to prepare that address on the subject of the filibuster, in which I went into this subject at some length,

I sketched the background of our Senate experience with the filibuster and the more recent history of Senate efforts to eliminate such road-blocks from the orderly democratic procedures of the Senate in that address which I delivered at Ohio State University on March 29, 1957.

This was the Walter J. Shepard memorial lecture for 1957, in which I likewise analyzed the proposals jointly sponsored by the majority and minority leaders, Senate Resolution 30, as well as the resolution which I have introduced and in support of which I am appearing today.

I pointed out briefly the serious limitations in the Knowland-Johnson resolution, namely, that all it does affirmatively is really to go back to the Walsh rule of 1917, allowing cloture to be invoked by two-thirds of those present and voting instead of two-thirds of those duly chosen and sworn, and to make the corrections necessitated by the Vandenberg ruling of 1948. But negatively their resolution seeks to limit or bind the hands of any future Senate in making further rule changes. In that address I likewise spelled out in reference to our resolution, Senate Resolution 17, the way in which our resolution would permit full debate, but yet bring it within the power of the majority of the elected Members of the Senate to come to a vote after such full debate has been held.

In the interest of saving this subcommittee's time, but not to shut off any questioning that you might want to put to me, I would therefore request your permission to insert in the record of the hearings the full text of the analysis which I delivered in the address just mentioned.

I ask the committee's most careful consideration of the history and the arguments which I have set forth therein in support of Senate Resolution 17. I invite your special consideration to the appeal which I have made for early action on this crucial question.

Senator TALMADGE. Without objection, it is so ordered.

(The address referred to may be found on p. 37, following Senator Douglas' statement.)

Senator DOUGLAS. If there is any chance by the normal procedures of amending rule 22 to facilitate reasonable limitation of debate—which I frankly doubt, because rule 22, as you know from the Wherry-Hayden resolution, provides that there shall be no limitation of debate on a motion to proceed to the consideration of a change in the rules, and therefore, in effect, handcuffs the Senate and throws away the key to any motion to consider a change in the rules, once the Senate has been organized and has been considered to have adopted its rules—it is up to the Senate Rules Committee in the first instance to make this possible.

It largely rests with your committee first, and then with the full Senate, to determine whether reasonable changes are possible by any other method than that attempted in January 1953, and again in January 1957.

I know you gentlemen are thoroughly familiar with this problem, and I thought that instead of repeating this lecture which I once gave, a few months ago, that I would simply put it in the record and, if you cared to, you could read it or students of the problem may read it.

Senator JAVITS. Mr. Chairman, I have a question or two.

Senator TALMADGE. You may proceed.

Senator JAVITS. Senator Douglas, I notice what you say about doubting that we can affect the situation because of the provision of the rule.

It is a fact, however, is it not, that the Vice President indicated that he would hold that provision unconstitutional, which would bring us, probably, if he should, to an appeal from the Chair, and the possibility of a motion to lay that appeal on the table and, therefore, not a filibuster upon that decision. At least we would come face to face with a chance for a normal "filibuster," in quotes, in the effort to amend rule 22; would you agree with that?

Senator DOUGLAS. Well, that is a very interesting possibility. It would be very interesting to explore that. I had not considered it. Whether the Vice President can assume functions like those of a lower Federal court, when it rules on statutes, in passing on the constitutionality of a Senate rule is a most interesting issue.

Senator JAVITS. Well, the Senator. I am sure, would agree with me that no court could review the rule directly. Hence, there would be no other way in which the question of constitutionality could be raised except by ruling of the Vice President.

Senator DOUGLAS. Well, do you mean that it would pave the way for ultimate decision by the courts?

Senator JAVITS. Well, no court could decide it. No court could review a rule of the Senate as it affects the Senate directly. Courts have many, many times rejected any such authority over a coordinate branch of the Government.

Hence, the only way the question of constitutionality could be raised and decided would be on a ruling of the Vice President.

I do not want to trouble the Senator on that.

Senator TALMADGE. Will the Senator yield at that point?

Senator JAVITS. Yes.

Senator TALMADGE. Does not the Constitution of the United States say that the Senate may make its own rules?

Senator DOUGLAS. Yes; it does.

Senator TALMADGE. Well then, how could anyone raise the constitutionality of a rule of the Senate except the Senate itself?

Senator DOUGLAS. Well, that is the question. Of course, the Vice President is an officer of the Senate. I am not going to pass judgment on this point of Senator Javits', because, very frankly, I had not thought of it. It is most ingenious. I would like to see it tried.

Senator JAVITS. Yes.

Senator DOUGLAS. But I am not a lawyer, and I do not want now to go further into it.

I will say, however, that it is this very provision of the Constitution, namely, that "Each House may determine the rules of its proceedings," to which we, who believe that we should adopt new rules, make our appeal. As you know, we strongly believe that when the Constitution says each House, it refers to the right, not only of the House of Representatives, but of the Senate, and in each Congress, to make its rules. We believe each Senate may do this at the beginning of its first session, and that during that interregnum before it does so, general parliamentary law prevails.

And general parliamentary law everywhere provides for moving the previous question, which shuts off debate.

Senator JAVITS. Well, the Senator feels that is, then, the best way in which to attain that result?

Senator DOUGLAS. Well, I had not given this proposal as much consideration, probably, as it deserves. In fact, it had not occurred to me

that the same ruling concerning section 3 of rule XXII might be made by the Vice President in the middle of a session of Congress after the rules are considered adopted by acquiescence, as he made at the outset in January 1957. My mind had been moving in the more simple fashion that at the beginning of a session, since the Senate then proceeds to organize itself, normally the Senate should have the right to proceed to the consideration of rules, not merely to the election of officers, the appointment of committees, but to the adoption of rules.

That is what the House does, and I am not going to get involved in the question as to whether the Senate is a continuing body or not.

Senator JAVITS. Well, that, in practical effect, has not actually been decided by the procedures in 1953 and 1957.

Senator DOUGLAS. No; it has not been finally decided, although, as you say, in the opinion of the Vice President this year I think he quite clearly indicated that it was his personal opinion that we were correct.

Senator JAVITS. But you just did not have the votes to make it stand up.

Senator DOUGLAS. That is right. We had 38 plus 3 absentees, or 41.

Senator JAVITS. Yes.

Senator DOUGLAS. That is a big improvement over the 21 votes we had in 1953.

Senator JAVITS. I was going to draw attention that that strength is growing, and I think it reflects a growing sentiment in the country, and if we cannot get anywhere else, I am rather hopeful that it will be successful in 1959.

Senator DOUGLAS. Well, let me say this: that the more people are aware of the issues which are involved, the more they study this question in a calm and deliberate way, I think the greater will be the support, intelligent support, for a change in the rules to make filibustering less effective.

And I want to emphasize this: Filibustering is prolonged discussion, intended to prevent a vote, and both elements are necessary. I have engaged in prolonged discussion in the Senate, but the purpose—while the purpose was to delay a vote—was to delay a vote only until the Senate and the public became more informed on the issues which were involved. It was never my purpose or the purpose of my colleagues to prevent a vote.

And that, I think, is the vital point, and that is why I believe that we should allow discussion to go for a considerable period of time before ever trying to invoke cloture.

Senator JAVITS. I thank the Senator.

Senator DOUGLAS. I thank you.

I may say the Senator from New York has been a very powerful reinforcement, not only spiritually but intellectually on this issue.

Senator JAVITS. You are very kind.

Senator DOUGLAS. And he brings new tricks out of his legal briefs on almost every occasion.

Senator TALMADGE. No questions.

We thank you very much for coming, Senator.

Senator DOUGLAS. Thank you very much.

Senator TALMADGE. We are happy to have you attend any of these meetings you can.

Senator DOUGLAS. Thank you. You are very courteous.

May I ask permission to have inserted in these hearings, following the address which I gave on the filibuster, certain editorials from a number of representative newspapers in the country in January of this year and shortly before when this issue was raised?

Senator TALMADGE. Without objection, so ordered.

Senator DOUGLAS. And I would also like to ask permission, if I may, to insert in the record the opinion of the Vice President on this issue.

Senator TALMADGE. Without objection, so ordered.

Senator DOUGLAS. Thank you very much.

(Senator Douglas' address at Ohio State University, the editorials, and the opinion of the Vice President referred to are as follows:)

[The Walter J. Shepard Memorial Lecture for 1957, Ohio State University, Columbus, Ohio, March 29, 1957]

THE FILIBUSTER AND HOW TO CURE IT

By Senator Paul H. Douglas*

Were this a century ago, I would be defining a filibuster as an irregular military adventure or hostile expedition launched by citizens of one country against the government of another with which the first nation was at peace.¹ To illustrate this definition, I would have given the example of William Walker who conducted various freebooting raids in Nicaragua with the purpose of overthrowing that Government and installing himself as dictator. His exploits and those of numerous others were chronicled 40 years ago by W. O. Scroggs in his lively book, *Filibusters and Financiers*.

This practice of filibusters continued to some degree in the latter part of the 19th century and on into the 20th—the most celebrated of those later military soldiers of fortune being the once well-known general, Lee Christmas.

I

But with the passage of time, the term "filibuster" has taken on another meaning, applicable to legislative halls and not to the fields of irregular battle. the 19th century and on into the 20th—the most celebrated of those later military discussion of a bill which is intended to prevent a vote.

Both elements of this definition are crucial. The discussion must be prolonged—at least, in relation to the time available²—and the purpose must be to prevent a vote from occurring. It is, consequently, a device whereby a minority tries to prevent the majority from expressing its will in legislation by interminable talk and debate so that the majority will become tired out and, from fatigue or under the pressure of other business, will give up and lay the pending measure aside.

Mere lengthy discussion is, therefore, not in itself a sure mark of a filibuster. In 1954, for example, I spoke for 3 days against the offshore oil bill and, in 1956, for 4 days against the natural gas bill. In each case, with my colleagues of the so-called liberal group, we kept the discussion going for approximately a month. We were, therefore, accused of carrying out a filibuster, and when much the same group has attempted to curb the institution of the filibuster, we have been labeled as hypocrites by a portion of the hostile press.

But while we were engaging in prolonged discussion intended to educate both the Senate and the country on the facts and principles of complicated problems, we were not seeking to prevent a vote from being taken. We believed that, in these cases, many of our colleagues were not fully acquainted with the real issues which were at stake. And even more, we believed that the public was in the

* I am deeply indebted to my associate, Frank W. McCulloch, for aid in the preparation of this lecture.

¹ An even earlier use of this term was to designate the freebooters on the Spanish Main who waylaid the galleons returning from the New World and stripped them of their treasure. These freebooters or filibusterers were mainly, although not exclusively, English, and of these Sir Henry Morgan was perhaps the most famous. In 20th century parlance they were "hijackers" of bullion.

² Thus toward the conclusion of a legislative session the filibuster need not be so prolonged in order to be effective.

beginning relatively ignorant about the matter, and most of the press were—at worst—either hostile to what we believed to be the public interest or—at best—relatively indifferent to it. A long discussion was needed to pound the issues home and to dramatize them. In such a struggle, stunts such as Senator Morse's record breaking 22½-hour speech, delivered without sitting down or leaving the Chamber, served their turn in breaking through the crust of indifference and centering attention upon the problem.

But in all these cases, such as the natural gas fights of 1950 and 1951, the offshore oil bill of 1954 and the atomic energy struggle of the latter year, there was no effort on the part of the liberal group to prevent a vote from being ultimately reached. We were all willing to abide by the decision of the majority as expressed in a vote, but we wished to have some voice in determining when that vote was to be taken. Public opinion in a democracy is ultimately decisive, but it takes time, and upon occasion, drama, to stimulate and educate public opinion. We could feel both legislative and public support were rising in all of these instances as we prolonged the debate, and save for rare exceptions we tried to talk germanely during the entire period of debate.

Voting ultimately did come on these measures, and on each of them we were beaten at the moment. But the popular feeling was so deep that in two of those cases, namely, the gas bill of 1950 and its companion measure of 1951, a Presidential veto followed. In each case, we had developed sufficient legislative strength so that the necessary two-thirds vote required to override the veto could not be obtained and the veto, therefore, stood. And in the case of the offshore oil bill, our debate compelled the proponents to reduce substantially the extent of the surrender to the coastal States by vesting in the Federal Government the ownership of the outer continental shelf beyond the 3 and 10 mile limits. These oil, gas, and sulphur deposits are now proving to be very valuable. Our prolonged discussion therefore played its part in saving these resources for the people of the Nation.

The value of full discussion is thus clear. I practice it. I would defend the right of all other Senators to do likewise.

But the distinction between using this prolonged debate to inform the Senate and the public and thus influence the final vote, on the one hand, and using it to prevent a vote, on the other hand, is also clear. Some use the term "filibuster" loosely to apply to all long debate. I believe it properly applies only to such debate as is aimed at blocking a vote. This is the sense in which I use it. This is the parliamentary device which I am discussing here, and which some of us in the Senate seek to limit in order to restore majority rule. This is the road block which, unless removed, threatens to stop the Congress from meaningful legislation to protect equality of opportunity for millions of our citizens. This is the anachronism which unless changed will perpetuate the incapacity of the legislative branch of our government to meet certain urgent needs of the present day.

II

The possibility of filibustering in the House has by now been reduced to very narrow limits. It is in the Senate that this practice now persists. This is primarily because each bill which comes before the House is preceded by a rule recommended by the Rules Committee which prescribes the conduct of the debate, limits the time allowed, and lays down what amendments, if any, are permitted to be voted on. This means that once a measure is before the House, a decision one way or another is virtually certain to be reached fairly quickly. The former method of filibustering in the House, under which one group called for repeated quorums and then absented themselves on the call, was broken in 1800 when Speaker Reed reserved to himself the right to count Members as present even though they did not answer to their names. Repeated quorum calls are, however, still occasionally used in the House to delay and, in the closing hours of a session, sometimes to sidetrack the passage of a bill.

But it is still true that the filibuster is almost exclusively a senatorial institution. This is so because except for the provisions of rule XXII of the Senate, a Senator may speak at any time, on any subject, for as long as he wishes or is physically or nervously able to endure. This right of almost unlimited debate leads to a much more careful consideration of important legislation than the House can give. But it also permits the filibuster—where a vigorous minority can by prolonged and interminable debate prevent the will of the majority from being finally effective.

From 1780 to 1800, it was possible to move the previous question in the Senate and upon the passage of this motion, debate could be brought to a close and the Senate could proceed to a decision.^a

With the dropping of this rule in 1800, no method of terminating debate, aside from sheer exhaustion, existed until 1917.

For a brief further period after 1800 the power of the Presiding Officer of the Senate to decide every question of order without debate and with no right of appeal from this decision by the full Senate could have been a restraint on unlimited debate. But this provision too was dropped in a revision of the rules on February 14, 1828.

Since then, filibusters were carried out in the earlier periods on the admission of certain States into the Union, and in the 1800's, on the extension of Federal control over elections. These were in the main sectional struggles.

During the so-called progressive era—from 1907 to 1917—the filibuster was used a number of times on ideological grounds, notably by Senator La Follette and others against the Aldrich-Vreeland banking bill of 1908, and also on the Canadian reciprocity bill of 1911, Wilson's ship purchase bill of 1915, and finally Wilson's armed merchantmen bill of March 1917.

The failure of this latter bill at the hands of the so-called willful 11, at the conclusion of the 64th Congress as relations with Germany reached a crisis, led to the adoption of cloture provisions in the opening days of the 65th Congress. This was called into extraordinary session immediately upon the simultaneous expiration of the former Congress and the final inability of the Senate in that Congress to bring the armed merchantmen bill to a vote.

Popular feeling against the filibuster was very intense. Taking advantage of this occasion, Senator Walsh of Montana asserted the right of the new Senate to adopt new rules and to curb filibusters. Under the pressure of public opinion, and with the probability that Senator Walsh would move the previous question and bring a new Senate rule to a vote, the advocates of completely unlimited debate gave way. Rule XXII of the Senate was then altered by the addition of a second paragraph so that a vote to limit debate, or what we call a vote for cloture, could be passed by two-thirds of those present and voting. The newly adopted rule also provided that, if and when such a cloture motion was passed, each Senator was then to be limited to speaking not more than a total of 1 hour on the motion itself and upon all amendments thereto, and that any dilatory motions were to be ruled out of order. The opponents of filibusters believed they had at last put into the Senate rules the means of limiting debate and reaching a vote.^b

In practice this cloture provision proved to be ineffective in all the attempts to obtain a vote on the so-called civil rights bills of the 1930's and 1940's. In the earlier period the effort was to bring antilynching bills up for a vote, while in 1942, 1944, and 1946 efforts to limit debate upon bills outlawing the poll tax as a prerequisite for voting similarly failed. In the latter year, cloture on a fair employment practices bill also failed by a wide margin to command the necessary two-thirds, and this was also true of two similar efforts which were made in 1950 under rule XXII as amended the previous year.

In all of these cases, I believe the opponents of these measures were in the minority, but with the aid of covert allies or crypto-opponents of civil rights they did number more than a third. Motions for cloture on civil rights bills under the 1917 rule were, therefore, defeated, and the hard core of opponents were able to talk these measures to death and compel their abandonment.^c

^a For a more complete discussion of this matter see my remarks in the Congressional Record for May 9, 1937, vol. 103, pp. 5948-5970.

^b The text of the 1917 rule is as follows:

"2. If at any time a motion, signed by 16 Senators, to bring to a close the debate upon any pending measure is presented to the Senate, the presiding officer shall at once state the motion to the Senate, and 1 hour after the Senate meets on the following calendar day but 1, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the presiding officer shall, without debate, submit to the Senate by an aye-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

"And if that question shall be decided in the affirmative by a two-thirds vote of those voting, then said measure shall be the unfinished business to the exclusion of all other business until disposed of.

"Thereafter no Senator shall be entitled to speak in all more than 1 hour on the pending measure, the amendments thereto, and motions affecting the same, and it shall be the duty of the presiding officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane, shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the presiding officer shall be decided without debate."

^c For the record of these attempts and the vote upon them, see Appendix A.

The attempt to limit debate under rule XXII was made more difficult, if not impossible, by a ruling of President pro tempore Vandenberg in 1918 that the 1917 cloture provision was only intended to apply to a measure which was formally before the Senate, and was not applicable to the prior and initial motion to proceed to the consideration of a bill. Senator Vandenberg ruled that here there was no limitation upon debate and that the pre-1917 anarchy prevailed in this situation. Cloture upon the motion to bring up the anti-poll-tax bill was thus ruled out, and an appeal from this ruling was canceled by the parliamentary tactic of the Republican leadership in moving to adjourn, which carried by a rollcall vote of 69 to 16—with Southern Senators and all of the Republican Senators present standing solidly together. Senator Barkley aptly referred to this 1918 action as "a travesty upon free enterprise in the way of legislation before the Senate of the United States."

Thereafter, in 1949, as Vice President, Mr. Barkley had an opportunity to plug this gaping loophole and made a contrary ruling. But he was narrowly overruled by the Senate by a vote of 40 to 41. Twenty-five Democrats and 16 Republicans voted to sustain him, but 25 Senators of each party voted to overrule.

This, however, brings us slightly ahead of our story. The dramatic adoption of the civil rights plank at the Democratic convention of 1948, followed by the striking and generally unexpected Democratic victory in November of that year, filled many of us with the hope that something could at last be done to remove the road block of the filibuster.

Early in the 1949 session, a proposal was brought up to make the 1917 cloture rule clearly apply across the board and to close up the loop-hole to which I have referred. After 10 days, cloture was invoked. The Vice President ruled it in order, but his ruling was, as I have stated, set aside.

After Vice President Barkley's attempt to clear the way for a vote on that motion to take up the technical change in rule XXII was defeated, we then made other efforts to modify rule XXII more substantially by providing that after a decent initial interval for debate, further discussion could be limited by a majority of the Senate or by 40 affirmative votes.

Our efforts, however, were to no avail. On essential matters, the Senate, and indeed, the House, has been controlled ever since 1938 by an informal but powerful alliance of the conservative southern wing of the Democratic Party and the conservative and primarily Middle Western and Western wing of the Republican Party. This coalition now came out again into the open and, by the vote of 63 to 23, passed an amendment to rule XXII which gave far greater protection to filibusters than did the 1917 rule. We wound up, therefore, in a worse position than when we started. In trying to take 1 step forward, we had really been forced to take 2 steps backward.

This was done in two ways. First, the new rule XXII—which is still the governing rule today—provided that debate could only be limited upon vote of two-thirds of the Senators duly chosen and sworn or by 64 affirmative votes. Thus, 33 Senators who either voted in the negative on a cloture motion or who absented themselves from the vote could prevent debate from being limited and could permit a filibuster to go on. In other words, all those who were absent and did not vote are in effect to be counted as voting "no" on cloture, even though if present they would have voted "yes."

This not only counts in the negative all those who because of sickness or genuine inability could not answer to their names. It also gives a convenient way out for those who would not dare to vote publicly with the opponents of civil rights, but who in their hearts wish to have the civil-rights measure defeated. For under these conditions, it is easy for a man to believe that he is ill and needs medical or hospital care when such a measure is coming up. By not voting, these can passively perpetuate the filibuster, but when taxed with their absence they can readily find an excuse which will be difficult to refute.

Since the average vote on cloture proposals had been approximately 84 during the years from 1917 to 1949, this requirement in itself greatly raised the obstacles to limitation of debate by requiring 64 affirmative votes in all cases as against an approximate total of 50 under the old rule. In practical effect, therefore, this raised the requirement for cloture by somewhere around 8 votes (or from a two-thirds to a three-fourths requirement). This was and is a much higher hurdle to surmount.

Second, and perhaps even more important, although little noticed at the time except by close students, was the addition of a third paragraph to rule XXII, namely, that there could be no limitation of debate upon any motion to bring up a change in the rules.

This meant in effect that debate could never be legally ended or limited on any proposal to liberalize the cloture provisions except by unanimous consent or by the physical exhaustion of the filibusterers. For if any proposal to change the rules and limit debate by majority vote or by some number less than 64 votes were introduced and a motion were made to bring it to the floor of the Senate, then under rule XXII a small and determined group could talk any such proposed change in the rules to death and not even two-thirds of the entire membership could stop them.

The debate on a rule change thus could only be terminated by unanimous consent or exhaustion. And on vital substantive issues where the articulate opinion of a section of the country was overwhelmingly in opposition to a given measure, debate could only be limited and a vote reached if the impossible number of 64 Senators joined to support cloture.*

"RULE XXII

"2. Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, except subsection 3 of rule XXII, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion or other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yeas-and-nays vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

"And if that question shall be decided in the affirmative by two-thirds of the Senators duly chosen and sworn, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

"Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

"3. The provisions of the last paragraph of rule VIII (prohibiting debate on motions made before 2 o'clock) and of subsection 2 of this rule shall not apply to any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate."

(Italics indicate changes from 1917 rule.)

What, in effect, has been done is to adopt John C. Calhoun's theory of concurrent majorities, under which a majority in the country or in Congress is not permitted to pass legislation unless it also meets with the approval of the majority of each and every section of the country. The failure of Calhoun and the South to establish this principle prior to 1860 was one of the factors which led to the Civil War. Its quiet adoption in modern times may well lead us to reconsider just who in the long run won that war.

While a determined filibuster can theoretically be used on a variety of subjects, in practice it is probably limited—as I have said—to those questions which a majority of the country as a whole favors, but which the voters of a large section bitterly oppose. In other words, public opinion back home must back up the filibusterers so that they do not lose much, if any, political strength by their action. Civil rights legislation furnishes such an issue. The articulate sentiment of the South is vigorously opposed. And while public opinion in the North and West is on the whole favorable, it is in the main only tepidly so. Under the existing rules, therefore, it becomes almost impossible to break through the barriers of rule XXII.

The attempts to secure cloture on civil rights since the 1940 change in rule XXII confirm this conclusion. Despite the commitments of both parties to civil rights in the preceding election, we fell well short of the required 64 votes for cloture on fair employment practice legislation in 1950, by votes of 52 to 32, and 55 to 33. Since then any attempt to overcome the barrier of rule XXII on civil rights has seemed fruitless.

This conclusion is reinforced by an examination of the political forces within the Senate. There are now 11 States, including Tennessee (but not Kentucky) which can be classed as truly southern. Twenty-one of the twenty-two Senators from this region will vigorously oppose any meaningful civil-rights measure. On such an issue, Oklahoma and Arizona will almost inevitably go with the South,

* The text of the 1940 rule, which is still in effect, is as follows:

while Nevada and Delaware will almost inevitably tend to be opposed to cloture since such a precedent will diminish the present tremendous political power of the small States in the Senate. This brings the almost sure total of votes against cloture on civil-rights measures to at least 29, or only 4 less than the necessary 33. In addition, Maryland, West Virginia and Kentucky, as border States, will generally add at least some negative votes. The legitimately sick and the crypto-allies of the South who can discover sudden disabling ailments will almost always be sufficient to add any other votes needed to turn the tide.

It is this very fact of arithmetic, moreover, which makes the majority of southern Senators opposed to the admission of Hawaii and Alaska to statehood. The entry of these two States into the Union would increase the total membership of the Senate to 100 and would require 34 negative votes or absentees to defeat a civil-rights measure. Since the four new Senators from Alaska and Hawaii would in all probability be pro civil rights, the relative position of the South would be slightly weakened.

It is for such reasons as these that many of us have believed that it is impossible to pass meaningful civil-rights legislation through the Senate as long as rule XXII remains on the books in its present form.

III

And yet, how can it be changed? For when any motion to change the rules is brought up, the Senate rules themselves prevent cloture. Such a motion can be filibustered to death, unless unanimous consent is obtained, which of course, is an impossibility. In other words, just as the adoption of the two-thirds of those duly-chosen-and-sworn provision put civil-rights legislation in the deepest dungeon, loaded it down with chains and put it into a locked straitjacket, so the third paragraph was thrown away the key in an ocean of words from which it cannot be retrieved.

So at first it seemed. But upon closer and prolonged study, some of us believed that we had found a real crack in the defenses which would permit action after all.

Granted that once the rules of the Senate were held to be adopted, it was virtually impossible to change them so as to recover the ability of a majority of the Senate to act on certain vital measures, was it not possible for the Senate to change its rules at the beginning of a new Congress without being inhibited by rule XXII itself?

Article I, section 5, of the Constitution declares that "Each House may determine the rules of its proceedings." Does not the phrase "each House" mean not only both branches of the Congress—that is, the House and the Senate—but also the separate branches of each succeeding Congress?

The House adopts its rules at the beginning of each Congress and in 1945, at the opening of the 79th Congress, Representative Rankin seized the occasion to make the Committee on Un-American Activities a part of the permanent machinery of the House. Why, we queried, could not the Senate also proceed at such an opening of Congress to adopt its rules and in doing so, modify rule XXII in such a manner as to curb the filibuster?

This raised the inevitable question, if we assumed that the previous rules expired with the preceding Congress and that the Senate in the new Congress could adopt new rules, under what rules would the Senate operate during this interregnum?

Our answer was that the Senate would operate under the principles of general parliamentary law and procedure and that this provides for the moving of the previous question. This motion, if carried automatically, shuts off debate and then requires an immediate vote on the main proposition. In this way, we hoped to shut off a filibuster on our motion to curb the filibuster. Jefferson's Manual, which has a persuasive, though not a controlling, influence on the parliamentary practices of the Congress, provides that the moving of the previous question only requires a simple majority for it to be carried, whereas Roberts' Rules of Order requires a two-thirds vote for it to prevail. Our confidence in this procedure was strengthened when we found that Senator Walsh had used an identical method to force the adoption of his cloture rule in 1917.

But to this contention of ours, it was said that the Senate—unlike the House—was a continuing body and that as such, its rules carried over from Congress to Congress and that, hence, any motion to change the rules—even at the beginning of a new Congress—had to be conducted under the officially printed rules of the previous Congress.

And how is it argued that the Senate is a continuing body? Because only a third of its Members have been chosen at the previous election with two-thirds carried over, while in the House all the Members have been so elected.

But we pointed out that the Senate, like the House at the beginning of each Congress, chose its officers anew and then named its committees, and that since all prevailing measures had died with the previous Congress, bills had to be introduced afresh.

We, therefore, contended that the Senate should have the right at such a time to consider its rules anew and either to approve those which had previously prevailed or to make changes in them. For if the Senate did not have this right, then it would, in practice, be tied forever by the dead hand of the past and would have no real opportunity for change. This would violate the long-recognized legal principle that one Legislature cannot bind its successors. It would bar the Senate of each new Congress from the exercise of its right under the Constitution to determine its own rules.

Therefore, at the beginning of the 83rd Congress in January 1953, a group of us sponsored a move to change rule XXII. The required initial parliamentary move was a motion to consider the adoption of rules for the Senate. This was made by Senator Anderson of New Mexico on January 3.

It was well understood that if a point of order was raised against this motion, Vice President Barkley (whose term did not expire until January 20) would rule that the motion was in order. Senator Taft, the leader of the Republican majority, therefore announced that after a moderate amount of debate, he would move to table Senator Anderson's motion. This was done and on the rollcall, the motion to table prevailed by a vote of 70 to 21. The 21 who voted against tabling were, of course, those who believed in a revision of the rules and consisted of 15 Northern and Western Democrats, 1 Independent, and 5 Republicans. The Democratic party leader, Senator Johnson of Texas, joined Senator Taft in opposing the Anderson motion.

The issue then slumbered until the election of the 84th Congress when the Democrats recaptured control of Congress by a narrow majority. A conference of liberal Democrats was held on the eve of the opening of Congress to decide whether or not the battle over the rules should be renewed. Senator Lehman of New York believed that it should. Others argued that in the interests of party harmony, the struggle should be postponed and this opinion prevailed. While I joined in this decision and should bear some of the responsibility for it, I have since come to believe that it probably was a mistake. Many others came to the same conclusion and resolved to bring the matter up without fail at the opening of the 85th Congress in January 1957. This was affirmed in the Democratic platform for 1956.

This time, we did more thorough preparatory work. Full cooperation was sought and obtained from the liberal Republicans of the Senate. A very detailed brief was prepared and presented to Vice President Nixon and a ruling was sought from him. At an appropriate moment in the course of debate, the proper parliamentary inquiry was made by Senator Humphrey of Minnesota, and the Vice President gave an informal opinion which upheld the point of view which we were defending.

In this opinion, the Vice President declared:

"The right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress.

"Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional. It is also the opinion of the Chair that section 3 of rule XXII in practice has such an effect."

While this opinion did not appear to swing any of the votes reported to us as doubtful, we were gratified by the support of the Vice President's carefully reasoned judgment.

The Washington correspondents had been predicting that our motion would be overwhelmingly crushed. But we greatly increased our strength and were only defeated by a vote of 55 to 34. In other words, we increased our strength by 17 votes over the 1953 poll. Twenty-one of the thirty-eight votes were from the Democratic side of the aisle. All of these were from the North and West except Senator Kefauver of Tennessee, who was the only southerner to support the

motion. The remaining 17 Republicans were primarily—although not entirely—from the Northeast. Moreover, the three absentees announced that if they had been present, they would have voted with us. Our strength had, therefore, increased to 41 members.

As our gains began to be evident during the debate, semiofficial rumors were circulated that some form of civil rights legislation would almost certainly be enacted even without a change in the rules. Other rumors promised an early change in the rules as well. This may have lost us 1 or 2 additional votes.

Almost immediately after the vote, the senatorial leaders of the two parties, who had presented a united front against the Anderson motion, jointly sponsored a resolution providing for a new rule XXII returning the cloture provisions to the conditions prevailing between 1917 and 1949, namely, that debate could be limited by two-thirds of those present and voting instead of by two-thirds of those "duly chosen and sworn." Another feature of the Knowland-Johnson resolution is to strike out the provisions expressly preventing cloture from applying to a motion to bring up a change in the rules, but providing instead that Senate rules shall continue from one Congress to the next, unless changed as provided in the rules. Careful students have pointed out that this new proposal for a restriction on changing Senate rules in any future Congress may be as unconstitutional as we believe section 3 of present rule XXII to be. The whole resolution is clearly an effort to make a small concession on the required votes, but to lock the door tighter against any further future concession to real majority rule.

With 13 other Senators, I presented an alternative resolution providing that after 2 days' notice on motion of 10 Senators, debate could be limited by two-thirds of those present and voting, and after 15 days' notice, limitation could be effected by an affirmative vote of a majority of those "duly chosen and sworn," or 49. This resolution also eliminated the existing provision that there could be no cloture on any motion to bring up a change in the rules and retained the present provision giving each Senator the right to speak for 1 hour, even after the affirmative vote on limitation.

Since a motion to limit debate would almost never be made—and indeed probably could not enlist the required 16 Senators to present it—until after at least 10 days to 2 weeks of debate, and perhaps more on some issues, the practical effect of the resolution I have presented would be to allow full latitude in debate. Limitation by a two-thirds vote would be virtually impossible, except in some national emergency, short of from 2 to 3 weeks, and if voted it would be possible to have another 96 hours of debate if each Senator used his permitted time. Limitation by 49 votes would only be resorted to after about 4 to 5 weeks of debate, with the same allowance of 1 hour to a Senator after that. The proposed rule is, therefore, liberal in the permitted limits of debate.

Given the increased interest in civil rights today, both on the part of supporters and opponents, moreover, it is important to recall that with a relatively full attendance, as on the Anderson motion in 1957 when 93 Senators voted, cloture by two-thirds of those present and voting impose almost as heavy a requirement as the 64 votes under the present rule. I therefore believe on the basis of our experience with the unworkability of the 1917 rule, that simple limitation by such a two-thirds vote would not open up many doors to action. The requirement of 49 in my resolution seems better adapted to the needs.

Once again, many Washington correspondents have predicted that there would be definitive action upon the Knowland-Johnson resolution. But like the joint bill which the same 2 leaders had introduced last year with over 80 cosponsors providing for "clean elections" (but not including primaries), this now (March 29) languishes within the Rules Committee and shows few signs of life.

IV

The immediate coming test of strength is to be instead on the civil rights bills backed by liberal Democrats and the administration.

These have been reported favorably by the Constitutional Rights Subcommittee of the Judiciary Committee and are now before the full Judiciary Committee. The emergence from that committee will not be easy. If they run the gantlet there, these bills—or the companion bills from the House, if it has acted—will then be placed on the calendar of the Senate. They can be brought up for consideration, however, only on motion, which the southerners are certain to resist. Then if cloture is obtained and the motion to consider is passed, filibustering will continue on the bill itself and on the amendments thereto.

There are, therefore, many parliamentary hurdles for the advocates of civil rights to jump and the later in the session that the bill is brought up for con-

sideration, the more difficult it will be to overcome the filibuster and to pass the bill. As I have said, I am extremely doubtful whether any meaningful civil rights measure can be passed by the Senate under its existing rules. But I shall be the happiest member of our body if I am proved wrong.

Should the filibuster, however, be successful in defeating the civil rights program, popular indignation against this practice will undoubtedly become more intense, and those of us who wish to curb it will in all probability get more than 38 votes on our next attempt in 1959 to change rule XXII. Some observers actually believe that we shall win. I believe that if we are not successful in 1959, we shall be in 1961.

The leaders of the Southern bloc are, I believe, aware of the trend in popular thinking. They give the impression that they do not want to use the filibuster unless they have to do so, because of their fear that in using it they will seal its doom. They may, therefore, seek to head off an open struggle and lessen the impact of popular indignation by quietly seeking to arrange a compromise in the form of a relatively weak and innocuous civil rights bill.

These possibilities are, however, conjectural. The events of the next few weeks and months will throw a great deal of light upon the practical fate of the institution of the filibuster.

V

In the meantime, I invite the attention of all those interested in political science and democratic parliamentary procedures to consider just what type of rule should replace the present rule XXII. I should like to propose the following principles for consideration:

1. Full discussion of important legislation should always be assured.
2. After a full discussion, it should be possible for the Senate to come to a vote.
3. A way must be provided to terminate filibusters and remove the roadblock to Senate action that is presented by prolonged discussion aimed at preventing a vote.
4. With proper safeguards for the rights of minorities to discuss issues fully, the right of a majority of the Senate to perform their constitutional function of legislating must be freed from the present shackles of the filibuster.
5. The historic compromise by which small States were given equal representation with the populous States in the Senate, already gives a relatively small minority of the people the control of a majority of the Senate. The filibuster under present Senate rules gives to the representatives of a minority of this minority, namely to 33 Senators, the right to block and veto action by the rest of the Senate. This goes far beyond the compromise which cemented the Union and strains the basic principles of our representative government. Majority rule will restore those principles.
6. The adoption of some such change in Senate rule XXII as I have proposed in Senate Resolution 17 would seem most likely to accomplish the foregoing objectives.
7. The Senate should likewise adopt a rule of relevancy, or germaneness, in general debate, with some latitude at briefer stated hours for the discussion of other matters.

Such changes will become more possible as the people learn more about the nature and effect of the fetters that now bind the Senate.

With such changes, the people may hope for constructive legislation to assure greater equality of opportunity to the millions of our Negro citizens and others who daily in all sections of the country drink the bitter cup of discrimination and intimidation.

The conscience of America demands such action for humanitarian, religious, and constitutional reasons.

Our national self-interest requires it, as we seek to show to the world that the promise and opportunities of democracy are far superior to the grim realities of tyranny.

The time has come for the Senate to act—with all deliberate speed.

APPENDIX A

Senate votes on invoking cloture rule ¹

Congress session	Date	Subject	Senator offering motion	Years	Nays	Congressional Record		Cloture
						Volume	Page	
66th Cong., 1st sess.....	Nov. 15, 1919	Treaty of Versailles.....	Lodge.....	78	16	58	8555-8556	Yes.
66th Cong., 2d sess.....	Feb. 2, 1921	Emergency tariff.....	Penrose.....	36	35	60	2852	No.
67th Cong., 2d sess.....	July 7, 1922	Fordney-McCumber tariff.....	McCumber.....	45	35	62	10040	No.
68th Cong., 1st sess.....	Jan. 20, 1925	World Court.....	Lenroot.....	68	26	67	2678-2679	Yes.
68th Cong., 2d sess.....	June 1, 1926	Migratory bird refugees.....	Norbeck.....	46	33	67	10362	No.
	Feb. 15, 1927	Branch banking.....	Pepper.....	65	18	68	3624	Yes.
	Feb. 26, 1927	Retirement of disabled emergency officers of the World War.....	Tyson.....	51	36	68	4901	No.
	do.....	Colorado River development.....	Johnson.....	32	59	68	4900	No.
	Feb. 28, 1927	Public Buildings in the District of Columbia.....	Lenroot.....	52	31	68	4985	No.
	do.....	Creation of Bureau of Customs and Bureau of Prohibition.....	Jones (Washington).....	55	27	68	4986	Yes.
72d Cong., 2d sess.....	Jan. 19, 1933	Banking Act.....	Robinson.....	58	30	76	2077	No.
73d Cong., 3d sess.....	Jan. 27, 1933	Antilynching.....	Neely.....	37	51	83	1166	No.
	Feb. 16, 1933	do.....	Wagner.....	42	46	83	2077	No.
77th Cong., 2d sess.....	Nov. 21, 1942	Antipoll tax.....	Barkley.....	37	41	86	9055	No.
78th Cong., 2d sess.....	May 15, 1944	Antipoll tax.....	do.....	36	44	90	2550-2551	No.
79th Cong., 2d sess.....	Feb. 9, 1946	FEPC.....	do.....	49	36	92	1219	No.
	May 7, 1946	British loan.....	Ball.....	41	41	92	4539	No.
	May 25, 1946	Labor disputes.....	Knowland.....	3	77	92	5714	No.
81st Cong., 2d sess.....	July 31, 1946	Antipoll tax.....	Barkley.....	39	33	92	10312	No.
	May 19, 1950	FEPC.....	Lucas.....	52	32	96	7300	No.
	July 12, 1950	do.....	do.....	55	33	96	9992	No.
83d Cong., 2d sess.....	July 26, 1954	Atomic Energy Act.....	Knowland.....	44	42	100	11942	No.

¹ Many cloture petitions have also been withdrawn or held out of order since 1917. Compiled by George B. Galloway, Senior Specialist in American Government, Legislative Reference Service, Library of Congress.

APPENDIX B

Rollcall vote in the Senate, March 11, 1939, on appeal from ruling of Vice President Barkley that cloture rule (rule XXII) does apply to a motion to take up a measure

[“Yea” vote is a vote to sustain the ruling]

YEAS—41

Aiken (R), Vermont
Baldwin (R), Connecticut
Brewster (R), Maine
Chavez (D), New Mexico
Douglas (D), Illinois
Downey (D), California
Ferguson (R), Michigan
Flanders (R), Vermont
Frear (R), Delaware
Green (D), Rhode Island
Hendrickson (R), New Jersey
Humphrey (D), Minnesota
Hunt (D), Wyoming
Ives (R), New York
Johnson (D), Colorado
Kefauver (D), Tennessee
Kilgore (D), West Virginia
Knowland (R), California
Lodge (R), Massachusetts
Lucas (D), Illinois
McCarthy (R), Wisconsin

McGrath (D), Rhode Island
McMahon (D), Connecticut
Magnuson (D), Washington
Miller (D), Idaho
Morse (R), Oregon
Myers (D), Pennsylvania
Neely (D), West Virginia
O'Connor (D), Maryland
O'Mahoney (D), Wyoming
Pepper (D), Florida
Saltonstall (R), Massachusetts
Smith (R), Maine
Smith (R), New Jersey
Taft (R), Ohio
Taylor (D), Idaho
Thomas (D), Oklahoma
Thomas (D), Utah
Tydings (D), Maryland
Wiley (R), Wisconsin
Withers (D), Kentucky

NAYS—46

Bricker (R), Ohio
Bridges (R), New Hampshire
Butler (R), Nebraska
Byrd (D), Virginia
Cain (R), Washington
Capehart (R), Indiana
Chapman (D), Kentucky
Connally (D), Texas
Cordon (R), Oregon
Donnell (R), Missouri
Eastland (D), Mississippi
Eaton (R), Montana
Ellender (D), Louisiana
Fullbright (D), Arkansas
George (D), Georgia
Gurney (R), South Dakota
Hayden (D), Arizona
Hickenlooper (R), Iowa
Hill (D), Alabama
Hoey (D), North Carolina
Holland (D), Florida
Jenner (R), Indiana
Johnson (D), Texas

Johnston (D), South Carolina
Kem (R), Missouri
Kerr (D), Oklahoma
Langer (R), North Dakota
Long (D), Louisiana
McCarran (D), Nevada
McFarland (D), Arizona
McKellar (D), Tennessee
Malone (R), Nevada
Maybank (D), South Carolina
Millikin (R), Colorado
Mundt (R), South Dakota
Reed (R), Kansas
Robertson (D), Virginia
Russell (D), Georgia
Schoeppel (R), Kansas
Sparkman (D), Alabama
Stennis (D), Mississippi
Thye (R), Minnesota
Vandenberg (R), Michigan
Watkins (R), Utah
Wherry (R), Nebraska
Young (R), North Dakota

SUMMARY

	Yeas	Nays
Republicans.....	18	23
Democrats.....	23	23
Total.....	41	46

APPENDIX C

Rollcall vote in the Senate, January 7, 1953, on motion of Senator Taft to lay on the table the motion of Senator Anderson to proceed to the consideration of the adoption of rules for the Senate of the 83d Congress

YEAS—70

Aiken (R), Vermont
 Barret (R), Wyoming
 Beall (R), Maryland
 Bennett (R), Utah
 Bricker (R), Ohio
 Bridges (R), New Hampshire
 Bush (R), Connecticut
 Butler (R), Maryland
 Butler (R), Nebraska
 Byrd (D), Virginia
 Capehart (R), Indiana
 Carlson (R), Kansas
 Case (R), South Dakota
 Clements (D), Kentucky
 Cooper (R), Kentucky
 Cordon (R), Oregon
 Daniel (D), Texas
 Dirksen (R), Illinois
 Dworshak (R), Idaho
 Eastland (D), Mississippi
 Ellender (D), Louisiana
 Ferguson (R), Michigan
 Flanders (R), Vermont
 Frear (D), Delaware
 Fulbright (D), Arkansas
 George (D), Georgia
 Gillette (D), Iowa
 Goldwater (R), Arizona
 Gore (D), Tennessee
 Hayden (D), Arizona
 Hickenlooper (R), Iowa
 Hill (D), Alabama
 Hoey (D), North Carolina
 Holland (D), Florida
 Jenner (R), Indiana

Johnson (D), Colorado
 Johnson (D), Texas
 Johnston (D), South Carolina
 Kerr (D), Oklahoma
 Knowland (R), California
 Langer (R), North Dakota
 Long (D), Louisiana
 Malone (R), Nevada
 Martin (R), Pennsylvania
 Maybank (D), South Carolina
 McCarran (D), Nevada
 McCarthy (R), Wisconsin
 McClellan (D), Arkansas
 Millikin (R), Colorado
 Monroney (D), Oklahoma
 Mundt (R), South Dakota
 Payne (R), Maine
 Potter (R), Michigan
 Purtell (R), Connecticut
 Robertson (D), Virginia
 Russell (D), Georgia
 Saltonstall (R), Massachusetts
 Smathers (D), Florida
 Smith (R), Maine
 Smith (R), New Jersey
 Smith (D), North Carolina
 Sparkman (D), Alabama
 Stennis (D), Mississippi
 Taft (R), Ohio
 Thye (R), Minnesota
 Watkins (R), Utah
 Welker (R), Idaho
 Wiley (R), Wisconsin
 Williams (R), Delaware
 Young (R), North Dakota

NAYS—21

Anderson (D), New Mexico
 Douglas (D), Illinois
 Duff (R), Pennsylvania
 Green (D), Rhode Island
 Hendrickson (R), New Jersey
 Hennings (D), Missouri
 Humphrey (D), Minnesota
 Hunt (D), Wyoming
 Ives (R), New York
 Jackson (D), Washington
 Kennedy (D), Massachusetts

Kilgore (D), West Virginia
 Kuchel (R), California
 Lehman (D), New York
 Mansfield (D), Montana
 Morse (Ind), Oregon
 Murray (D), Montana
 Neely (D), West Virginia
 Pastore (D), Rhode Island
 Symington (D), Missouri
 Tobey (R), New Hampshire

SUMMARY

	Yeas	Nays
Republicans.....	41	5
Democrats.....	29	15
Independent.....		1
Total.....	70	21

APPENDIX D

Rollcall vote in the Senate, January 4, 1957, on motion of Senator Johnson of Texas to lay on the table the motion of Senator Anderson to take up for immediate consideration the adoption of rules for the Senate in the 85th Congress

YEAS—55

Barrett (R), Wyoming
Bennett (R), Utah
Bible (D), Nevada
Bricker (R), Ohio
Bridges (R), New Hampshire
Butler (R), Maryland
Byrd (D), Virginia
Capehart (R), Indiana
Carlson (R), Kansas
Case (R), South Dakota
Cotton (R), New Hampshire
Curtis (R), Nebraska
Daniel (D), Texas
Dirksen (R), Illinois
Dworschak (R), Idaho
Eastland (D), Mississippi
Ellender (D), Louisiana
Ervin (D), North Carolina
Frear (D), Delaware
Fulbright (D), Arkansas
Goldwater (R), Arizona
Gore (D), Tennessee
Green (D), Rhode Island
Hayden (D), Arizona
Hickenlooper (R), Iowa
Hill (D), Alabama
Holland (D), Florida
Hruska (R), Nebraska

Jenner (R), Indiana
Johnson (D), Texas
Johuston (D), South Carolina
Kerr (D), Oklahoma
Knowland (R), California
Langer (R), North Dakota
Long (D), Louisiana
Malone (R), Nevada
Martin (R), Pennsylvania
McCarthy (R), Wisconsin
McClellan (D), Arkansas
Mouoney (D), Oklahoma
Mundt (R), South Dakota
Revercomb (R), West Virginia
Robertson (D), Virginia
Russell (D), Georgia
Saltonstall (R), Massachusetts
Schoeppel (R), Kansas
Scott (D), North Carolina
Smathers (D), Florida
Sparkman (D), Alabama
Stennis (D), Mississippi
Talmadge (D), Georgia
Thurmond (D), South Carolina
Watkins (R), Utah
Williams (R), Delaware
Young (R), North Dakota

NAYS—38

Alken (R), Vermont
Allott (R), Colorado
Anderson (D), New Mexico
Beall (R), Maryland
Bush (R), Connecticut
Carroll (D), Colorado
Case (R), New Jersey
Chavez (D), New Mexico
Church (D), Idaho
Clark (D), Pennsylvania
Cooper (R), Kentucky
Douglas (D), Illinois
Flanders (R), Vermont
Hennings (D), Missouri
Humphrey (D), Minnesota
Ives (R), New York
Jackson (D), Washington
Kefauver (D), Tennessee
Kennedy (D), Massachusetts

Kuchel (R), California
Lausche (D), Ohio
Magnuson (D), Washington
Mansfield (D), Montana
Martin (R), Iowa
McNamara (D), Michigan
Morse (D), Oregon
Morton (R), Kentucky
Murray (D), Montana
Neuberger (D), Oregon
O'Mahoney (D), Wyoming
Pastore (D), Rhode Island
Payne (R), Maine
Potter (R), Michigan
Purtell (R), Connecticut
Smith (R), Maine
Smith (R), New Jersey
Symington (D), Missouri
Thye (R), Minnesota

SUMMARY

	Yeas	Nays
Republicans.....	28	17
Democrats.....	27	21
Total.....	55	38

EDITORIALS ON FILIBUSTERING PLACED IN THE CONGRESSIONAL RECORD OF MAY 9, 1957 (P. 5065), BY SENATOR PAUL H. DOUGLAS, OF ILLINOIS

[From the St. Louis Post-Dispatch of January 7, 1957]

THE FILIBUSTER UPHELD

There is only one way to describe what the Senate did Friday in preserving the filibuster rule. By this vote of 55 to 38 the minority southern Democrats once more maintained their power to obstruct civil-rights legislation by essentially physical means. And they maintained it through the active cooperation of a majority of the Republican Members, in whose hands lay the ultimate decision.

The filibuster rule was defended by some Senators on the ground that the Senate is a continuous body, and so must operate under the rules of previous sessions. This is one of those intricate, legalistic rationalizations which Senators delight in when they wish to conceal their real motives. The Senate spent its opening day Thursday electing new officers, setting up a new party organization, and receiving new bills and new resolutions—all on the assumption that this was a new 85th Senate, discontinuous from the 84th. How could it suddenly become a continuous body on Friday, solely for the purpose of adopting rules?

The filibuster rule was defended by some Senators as a sacred refuge of minority rights. This is one of those curious inversions that also find special favor on Capitol Hill. The fact is that the whole purpose and intent of the filibuster is to deny legislative protection for minority rights. It is the means by which a southern white majority withholds equality before the law from the southern Negro minority. Nationally, the southern white majority is a minority. But it imposes its will on the national majority through the filibuster rule.

If the Negro minority in the South enjoyed as much unreasonable power as the southern Democrats enjoy as a minority of the Senate, the South would be aflame with angry protest.

Again the filibuster rule has been defended as the guardian of the precious right of democratic debate. This also is so much nonsense. Senators engaged in a filibuster do not debate. They do not discuss issues. They do not explore the merits and demerits of legislation. Instead, they use speech as a means of obstructing truly democratic consideration and decision. They use speech as a method of imposing physical barriers to the transaction of Senate business until the Senate accepts their view of what legislation should be allowed to come to a vote.

For all these reasons, the filibuster rule is doomed to die in time. It might have been beaten this year if President Eisenhower had exerted his power as Republican Party leader. Because he chose to stand aside from the battle, a majority of the Republicans found it easy to vote with the southern Democrats. And, of course, the southern Democrats will be expected to return the favor by supporting the GOP on legislation in the future.

Even so, the move to curb the filibuster got 38 votes plus the support of 2 absentees—a total of 40 votes as compared with only 21 4 years ago. The Democrats increased their antifilibuster vote over 1953 from 15 to 21, and the Republicans from 5 to 17.

Though the filibuster is preserved for another session, this need not mean the end of progress on civil rights. The situation remains what it has been for years. Great strides are possible through strong and effective action of the executive branch and through courageous judicial defense of our constitutional guarantees of equal rights. There is still plenty to do in both these fields while the Nation waits for Congress to join the fight with legislation.

Someday the Senate, too, must step into the 20th century.

[From the New York Herald Tribune of January 6, 1957]

THE SURVIVAL OF THE FILIBUSTER

If the defeat of the attempt to end unlimited filibustering in the Senate was foreseen, it is no less disappointing. Yet progress has unquestionably been made, and the fight is far from over. For one thing, the antifilibuster forces have doubled in strength since the last vote was taken on this issue in 1953. For another new attempts will be made—Senator Knowland has announced he will

introduce an amendment to the Senate rules designed to curb filibusters—although it must be admitted that the chief opportunity for action in this Congress has been lost. And the bold and statesmanlike opinion of Vice President Nixon, which held that the last part of rule XXII forbidding limitation of debate on the rules themselves is unconstitutional, is bound to influence the Senate's attitude, as it has the public at large.

The whole question has been unfortunately confused. There did not seem to be enough distinction made between the fight against the filibuster as a minority veto and the question of changing the rules in general. The Senate is wary of adopting new parliamentary procedures at the opening of each Congress. It justifiably regards itself as a continuing body, and one can agree with Senator Lyndon Johnson's argument that legislative turmoil would result if new rules were adopted wholesale to suit the temper or fashion of the moment. But the point is that in this case it was the filibuster, and only the filibuster, which was the object of attack. The question of new rules was brought up because that was the only way of rooting it out into the open where it could be amended.

Behind this struggle over rules, of course, lies the logjam of civil-rights legislation blocked by the threat of southern filibusters. But even so, advocates of this legislation are hopeful that some of it, at least, will pass during this session. Public opinion is behind it, and the diehards may well decide to bow to the inevitable. And although the filibuster is still with us, its days may well be numbered.

[From the New York Times of January 5, 1957]

THE RULES REMAIN

As prearranged by the leadership of both parties, the Senate of the United States yesterday turned down the one and only opportunity it will have at this session to make a serious fight against the rules that give to the threat of filibuster its potency.

The parliamentary situation under which the brief debate was held and the foreordained vote taken may perhaps have been another example of Majority Leader Johnson's famed tactical skill in getting what he wants. But to avoid unpleasant obstacles is not to make them disappear, and to smooth away real issues is not to solve them.

The Senate vote yesterday leaves the basic problem of the filibuster just where it was; and to both Democrats and Republicans goes the discredit of helping make that result possible. Minority leader Knowland happily joined Mr. Johnson in the scheme to insure that there would be only a formal fight over the issue of whether or not the Senate was to go on under the same old rules that permit the filibuster to throttle democratic procedure. When the appointed time came to vote, the powerful coalition of conservative southern Democrats and right-wing midwestern Republicans won its expected victory. But at least there is something encouraging in the fact that more than one-third of the total membership of the Senate—21 Democrats and 17 Republicans—voted against killing the Anderson motion that would have been the first step in overcoming the menace of the filibuster.

The filibuster threat ought to be removed by the Senate so that it can regain its own freedom of debate. That is reason enough; but, as everyone knows, the further purpose in fighting the filibuster is to clear the way for civil-rights legislation, which has traditionally been blocked by the threat of this antidemocratic device. However, even though the Senate rules remain unchanged and the filibuster still is potentially as strong as it ever was, there is a growing hope that some moderate civil-rights bills may actually be enacted by this Congress. Both the liberal Democrats and the administration itself have been behind such proposals. Though the more conservative element in the Senate won their victory yesterday through continuation of the outworn rules, that victory should not be consolidated by subsequent rejection of the sensible and highly desirable civil-rights proposals that will be coming up at this session.

[From the Hartford Times of January 7, 1957]

DESERVED TO PASS

The Senate rule that has permitted unlimited debate has long ago completely outlived its usefulness but once again reform has been defeated. Even a bipartisan move could not bury it. By a vote of 65 to 38, the Senate, in its first formal acts of this new session, decided to retain the outdated right to filibuster a bill to death.

Behind this struggle at this time is the civil rights issue which lined up all the Southern Senators against any change in the Senate rules. Other Senators had other reasons. Senators Bush and Purtell were both on the side of needed reform. Mr. Bush has labored long and vigorously against the filibuster practice.

The challenge of the power of Senate minorities to block action on legislation by the filibuster—the tactic of dilatory debate to prevent a vote—was doomed to failure at the start.

Now that the rules fight has ended, according to word quietly passed in the cloakrooms, the leaders will start negotiations to bring forward civil rights bills that should satisfy liberal elements of the party without bringing on an unbreakable filibuster.

But for the time being, at least, advocates of a change in the filibuster rule settled for an opportunity, through a round of speeches, to stage an orderly demonstration against what they called minority rule. In so doing, they redeemed a plank in the 1956 Democratic platform that pledged the party to make an effort to modify the filibuster rule.

The current effort stems from the fact that all past attempts to get advanced civil rights bills through the Senate have been blocked by filibustering southerners. All moves to invoke cloture, or limitation of debate, also have failed when such legislation was at stake.

Under the present rule, 64 Senators, or two-thirds of the entire membership, must approve a cloture motion if debate is to be limited. Some Senators seeking a change favor cloture by a simple majority of those voting. Others are willing to settle for either a majority of the entire Senate—49—or a two-thirds majority of those voting.

This issue will continue to assert itself until it is settled right. There must come an end to minority dictatorship.

[From the Denver Post of January 8, 1957]

THE FIGHT GOES ON

The significance of last week's vote on the Senate filibuster can be understood only when it is compared with two other votes on the same issue in recent years.

In 1949, the filibuster rule as it now stands was approved in the Senate by a vote of 63 to 23. In 1953, the vote to table a proposed change in the rule was 70 to 21.

Last Friday, the vote to table a proposal for a rule change was 55 to 38. In other words, opposition to the filibuster which could count only 23 adherents 8 years ago and only 21 adherents 4 years ago now has 38 supporters and after Senator-elect Javits, of New York, takes his seat the count probably will be 39.

In 1953 there were 15 opponents of the filibuster rule on the Democratic side of the Senate and only 5 on the Republican side. This year there were 21 Democrats who favor a more liberal rule and 17 Republicans.

Friday's rollcall showed 12 Senators voting in opposition to the position they took in 1953. Of the 12, one was a Democrat, Senator Green, of Rhode Island. Four years ago he voted to consider a filibuster rule change. This time he voted to table consideration of any change.

Eleven Republicans who voted in favor of the filibuster in 1953 voted this time in favor of considering a rule change. The switch of those Republican Members was largely responsible for the better showing the antifilibuster forces were able to make this time.

The 11 Republicans who have adopted a new and more liberal view on Senate rules are Bush and Purtell of Connecticut, Cooper of Kentucky, Payne and Smith of Maine, Beall of Maryland, Potter of Michigan, Thye of Minnesota, Smith of New Jersey, and Aiken and Flanders of Vermont.

It is interesting to note that 19 Members of the Senate had not previously had the opportunity to vote on the filibuster question. Ten of them voted to consider

a change and 9 voted to table the motion which might have led to a change. Thus, among new Senators sentiment is slightly in favor of new rules.

Friday's vote will encourage antifilibuster foes to make new assaults on phases of the complicated Senate rules. The first attack is expected to take the form of a resolution declaring that a present rule, which permits unlimited debate on a proposal to change any rule, violates the part of the Constitution which says "each House (of Congress) may determine the rules of its proceedings."

Vice President Nixon has already expressed the opinion that unlimited debate would be unconstitutional if it prevented the Senate from voting to determine its rules. Foes of the filibuster believe if they can knock out unlimited debate on rule changes they will have won an important step toward more effective limitations on the debate on bills.

In any event, they aren't giving up and even see a good chance to win.

(From the St. Louis Post-Dispatch of January 8, 1957)

HOW THE STATES STOOD

Not often is a rollcall vote more in need of study than that by which the Senate tabled the resolution of 31 Senators for revising the rules so as to bring filibusters under reasonable control. For not often is analysis of performance in the Senate so illuminating.

The vote for tabling was 55 to 38 and counting in the 2 absentees favoring the change the actual division of the Senate was 55 to 40. Thus the only Senate seat not accounted for was that of Senator-elect Javits who is still Attorney General of New York. Had he been sworn in he undoubtedly would have raised to 41 the total in favor of restricting filibusters.

As the vote was so much closer than the 70-to-21 division for changing the rule 4 years ago, it is important to know which States blocked progress this time. Here is how the States stood in the division last Friday:

BOTH SENATORS FOR TABLING

Southern States

Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Texas, South Carolina, and Virginia.

Northern and other States

Arizona, Delaware, Indiana, Kansas, Nebraska, Nevada, New Hampshire, North Dakota, South Dakota, and Utah.

BOTH SENATORS AGAINST TABLING

Colorado, Connecticut, Kentucky, Maine, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, Oregon, Vermont, and Washington.

SENATORS SPLIT ON TABLING

California, Idaho, Illinois, Iowa, Maryland, Massachusetts, Ohio, Pennsylvania, Rhode Island, Tennessee, West Virginia, Wisconsin, and Wyoming.

This breakdown by States makes it very clear that the filibuster rule would have been thrown in the ashcan had it not been for the many Republican votes that supported the southerners. The vote of the Democratic Senators from Georgia, Mississippi, South Carolina, and Virginia, for example, is explainable if not defensible. What about the two votes cast by each of the pairs of the Republican Senators from Indiana, Kansas, Nebraska, New Hampshire, North and South Dakota, and Utah? Why should these 14 GOP votes have been cast on the side of the filibusterers?

A breakdown by parties is as instructive as the breakdown by States. Twenty-eight Republicans were for tabling and 18 were against tabling. The Democrats were more evenly divided—27 for tabling to 22 against it. Again the record shows that the rule change lacked on the GOP side the support it needed to pass.

Are these Republicans one with the Dixiecrats? Or do they not believe what many GOP leaders have been saying about civil rights? Or are they willing

to deprive thousands of American citizens of equal rights in order to embarrass the Democratic Party in Congress?

Whatever the answer, the people of Missouri can be grateful that the full force of this State spoke in the Senate, through the votes of Senators Hennings and Symington, on the side of reason. The Illinois delegation was one of those that divided. Senator Douglas was a leader in the fight for the change. Senator Dirksen, who rode President Eisenhower's coattails last November, voted with the southern filibusterers.

We hope the facts behind this rollcall are told to newspaper readers all over the country.

[From the Des Moines Register of January 7, 1967]

4

THE FILIBUSTER SURVIVES

The attempt to liberalize the Senate's filibuster rule, through adoption of new rules at the start of the session, has failed. But it was a glorious failure which points up the great gains that have been made by those who want legislation to guarantee equal rights to the 17 million American Negroes.

The vote on the question of adopting new rules was 55 to 38. The 38 Senators who favored adopting new rules want civil-rights legislation. But not all the 55 Senators who voted against adopting new rules are in favor of segregation of Negroes or of discrimination against them. They voted as they did for a variety of reasons.

Unquestionably a majority of the Senators would vote, if a straight-out test came, for civil-rights legislation. But they won't get the chance to do this. Southern Senators won't let such legislation come to a vote. They can block a vote by filibustering—by talk, talk, talk. The Senate could limit this talk, by invoking its present cloture rule. But under this rule, it takes the vote of two-thirds of the Senators—64 out of 90 Members—to limit debate and end a filibuster. So 33 Senators can block action on civil-rights legislation.

The effort was made to change this cloture rule at the start of the session because it's almost impossible to do so later. The cloture rule cannot be invoked in any debate on changing the rules. So only a handful of Senators can filibuster to death an attempt to change the cloture rule.

Friday's vote was on whether the Senate could change its rules at the beginning of the session. If the vote had been favorable, then the Senate could have eased the cloture rule and civil-rights legislation could have been enacted. The great gain which has been made by those who feel that it is imperative to change the cloture rule is shown by comparing Friday's vote, 55 to 38, with the 70 to 21 vote on the same question in 1963. A switch of nine votes would have changed the outcome this year. We predict there will be many more switches than that in the next 2 years.

Some Senators who voted against changing the rules Friday did so because of: (1) their concept of the Senate as a continuing body for which the rules hold hold over from session to session; (2) their respect for tradition; or (3) a desire to support their party leaders (both Republican Leader Knowland and Democrat Leader Johnson opposed changing the rules).

We regret that Senator Bourke B. Hickenlooper, of Iowa, was one of those voting against changing the rules but recognize that this doesn't indicate any anti-civil-rights viewpoint. He voted that same way in 1953 and so did Senator Guy Gillette.

Senator Tom Martin of Iowa deserves praise for his vote in favor of changing the rules. We believe his vote reflects the sentiment of most Iowans.

The opinion which Vice President Richard Nixon gave with respect to Senate rules set a precedent which may speed victory for those advocating civil-rights legislation. His opinion seems to us to have been an enlightened and sensible one.

He held that the Senate is a continuing body under the Constitution. He also held that rules of the previous Congress remain in effect unless the new Congress decides otherwise. But he believes that the Constitution gives the Senate the right to decide otherwise—to adopt new rules or change rules at the beginning of a session.

"The Senate should not be bound by a provision in those previous rules which denies the membership of the Senate the power to exercise its constitutional right to make its own rules," said Nixon's opinion.

The Senate didn't go along with Nixon. But it was a narrow escape for the South. The handwriting is on the wall. It won't be possible much longer

for a small minority, through rules and technicalities, to thwart the will of a vast majority of the people.

[From the Washington Post of January 5, 1957]

MR. NIXON'S RULING

Vice President Nixon has presented a very interesting opinion on the highly controversial rule 22 that may ultimately break the logjam over the filibuster in the Senate. Insofar as rule 22 denies a majority in the Senate the right to adopt the rules under which it desires to proceed, the Vice President concluded, it is unconstitutional. This opinion will lend powerful support to the drive to upset the existing practice of unlimited debate on any rule change, even though the liberals trying to upset rule 22 lost their fight yesterday.

Mr. Nixon's ruling stems from the fact that the Constitution gives the Senate the unqualified right to change its rules. The Vice President contends, with convincing logic, that this is a continuing right. It cannot be denied to the Senate of 1957 because the Senate of 1884 adopted standing rules which have remained in effect since that date, with various amendments. Section 3 of the amendment adopted in 1949 says that the very restrained cloture procedure set up to limit debate on legislation shall not apply to any proposal to change the standing rules of the Senate.

The effect of this, the Vice President says, is to deny a majority of the Senate the right to make new rules. It is at this point that sharp controversy arises. To be sure, the existence of rule 22 makes it impossible for a majority to adopt new rules unless they wear out a filibuster. Perhaps that makes it unconstitutional, but it is interesting to note that the situation is the same as it would be if the Senate were meeting for the first time without any rules.

A more important point is that, if rule 22 is unconstitutional, only the Senate can remove this unconstitutionality. Mr. Nixon says that the old rules will remain in effect until the Senate changes them, "with the exception that the Senate shall not be bound by any provision of those previous rules which denies the membership . . . the power to exercise its constitutional right to make its own rules." But the Senate itself has to be the judge of whether this right to make its own rules has been infringed, and if it should so decide the Senate would have to apply its own remedy. It is not to be supposed that any court will tell the Senate that it is acting unconstitutionally in an area which the Constitution leaves so completely to senatorial control.

As a practical matter, then the Senate will soon or late have to face the issue and break a filibuster on rules unless an amicable agreement can be reached. The Vice President has not resolved the controversy; he has merely added an additional argument against rule 22—that one part of it is unconstitutional. It remains for the Senate to agree upon a reasonable amendment of the rule—such as limitation of debate on all business before the Senate (including amendment of the rules) by a two-thirds vote of those present, as this newspaper has previously suggested. The alternative would be a prolonged fight which again might prove inconclusive.

[From the St. Louis Globe Democrat of January 7, 1957]

THE FILIBUSTER: ITS DAYS NUMBERED

The filibuster rule in the Senate is still hale and hearty, but it came much closer to getting the ax than anyone expected. Before the issue came to a vote, foes of the filibuster estimated they could count on the support of only 32 Senators—at most.

But when the ballots were counted, 38 Senators voted with them. Two other Senators who were absent announced they too would have voted against the filibuster if they had been on the floor of the Senate.

This time, the antifilibuster forces went down to defeat by a vote of 55 to 33. Four years ago, a similar proposal was defeated by a vote of 70 to 21.

This shows a marked change in the Senate's attitude toward the filibuster rule. The big shift has come on the part of GOP Senators.

In 1953, under the leadership of Senator Taft, only five Republican Senators supported the move to kill the filibuster. Forty-one, including Senator Taft, voted to keep it alive. This time, 17 GOP Senators voted against the filibuster.

This big GOP switch in favor of less restrictive Senate rules undoubtedly was influenced by the stand Vice President Nixon took. By virtue of his office, Nixon presides over the Senate.

At the start of the debate, he stated that, in his opinion, the foes of the filibuster were perfectly correct in arguing that the Senate can adopt new rules at any time—by a simple majority vote. And that could include a rule making it easy to choke off unlimited debate—the filibuster.

This is the same line of reasoning that the leaders of the antifilibuster move, like Senator Clinton Anderson, New Mexico Democrat, have followed. Vice President Nixon took a clear-cut stand with them.

In Missouri, both Senator Hennings and Senator Symington voted with the antifilibuster forces. The Illinois delegation was split, with Senator Douglas, Democrat, against the filibuster. Senator Dirksen, Republican, voted in favor of tabling Senator Anderson's motion to proceed with the consideration of new rules.

Although the filibuster rule still stays on the Senate's book, this latest vote on the issue indicates that its days are numbered.

[From the Hartford Times of January 8, 1967]

WORTH ANOTHER TEST

The effort in the Senate to curb filibustering has met with no rebuff but another effort will be made to change the rules which have given a minority dictatorial power. Advocates of a change, among whom Senator Bush has been a steadfast leader, lately joined by Senator Purtell, see an opening for a second test of strength in this session.

The recent vote was 65 to 38 against changing the rules. Senators Douglas, Humphrey, and Knowland have each introduced a compromise motion of like import. They propose that a two-thirds majority vote of 64 be required to end debate during the first 3 weeks that a bill is under discussion but that, thereafter, a simple majority of 40 could impose cloture.

The new plan was also expected to include an attempt to have Vice President Nixon declare a section of the present Senate debate rules unconstitutional. Mr. Nixon ruled on Friday that each Senate has the constitutional right to draft its own rules. Opponents of the change, however, argued successfully that the Senate is a continuing body whose rules carry over from session to session and can be changed only by a two-thirds vote.

At issue is a section of Senate rule XXII that prohibits the limitation of debate when the Senate is debating a motion to take up a bill. The rule further provides that once a bill has been taken up, a vote of 64 of the 96 Senators is necessary to impose the limitation.

This fight on the rules issue will determine whether civil-rights legislation has a chance in this session. Heretofore, southern Senators have been able to talk legislation to death by taking so much time that the Senate had to drop the bills and take up other matters. If a compromise or other tactic can remove this dictatorial power of a minority, the effort should be made.

[From the Des Moines Register of January 8, 1967]

THE FILIBUSTER AND MAJORITY RULE

The second round of the filibuster fight is getting underway with a proposal by Republican Minority Leader William Knowland to make it easier to limit debate in the Senate.

Knowland's proposal is to require a vote of two-thirds of the Senators present and voting in order to cut off debate. The present rule requires agreement of two-thirds of the entire Senate, or 64 Members, before debate can be limited.

A Wall Street Journal editorial reprinted on this page today, which defends the present rule, notes that a two-thirds vote is commonly required in legislative proceedings. However, the two-thirds vote needed to override a veto, to impeach an officer, to propose a constitutional amendment, or to ratify a treaty are all two-thirds of those present and voting. The present two-thirds rule on limiting debate imposes a far tougher requirement.

The Knowland rule is essentially the same one that was in effect in the Senate from 1917 to 1949. There were 10 attempts to cut off debate during that time. Only 4 of the 10 attempts were successful. The Knowland rule obviously would still give the filibusterers a good deal of leeway.

Another possible approach is one backed by Senators Paul Douglas, Democrat, of Illinois, and Wayne Morse, Democrat, of Oregon. It would enable debate to be cut off by simple majority vote of the Senate, but only after a waiting period of 15 days, excluding Sundays and holidays, to assure full debate.

The Wall Street Journal sees a danger in majority rule, pointing out there are times when a minority speaks with greater wisdom. There is danger in majority rule, to be sure. It is present every time an election is held or a legislature meets.

But there are greater dangers in minority rule. Democracy assumes that by and large majorities will make the right decisions, or be capable of correcting the wrong decisions. The House of Representatives does not permit a willful minority to prevent majority sentiment from being expressed, nor does the British Parliament, which has effective means of dealing with filibusters.

Proponents of a meaningful antifilibuster rule do not want to prevent minority views from being expressed, nor to enforce silence. Some, like Senators Morse and Douglas, have themselves taken part in prolonged debate in which they represented the minority view. The issue is not whether the minority should be heard, but whether after it is heard, there should be opportunity for the ayes and nays to be counted.

[From the Pittsburgh Post-Gazette of January 8, 1957]

FIGHTING THE FILIBUSTER

By a parliamentary end run the Senate has voted to retain the filibuster for another session, though there may still be some effort made to weaken it a little. However, the dispute between those who would stop the filibuster—which is an effort to prevent law-making by talk and other tactics of delay—and those who would continue it did produce a valuable opinion from the Chief Officer of the Senate, Vice President Nixon. The opinion establishes a favorable precedent for those who want to forbid a minority to defeat legislation desired by a majority.

The villain of the filibuster piece is Senate rule XXII, which sets almost impossible conditions for bringing debate to a close. Under this rule a determined filibuster cannot be shut off without the votes of 64 Senators. This means, for practical purposes, that civil-rights legislation can never get through the Senate because 22 Southern Senators plus 11 other Senators allied with them can frustrate the majority. And, it should be noted, a Senator who is absent, by design or debility, automatically strengthens the minority by 1 vote.

The arch villain of the filibuster piece is section 3 of rule XXII. This says that no limit of any kind can be imposed on debate when the Senate is considering a change in its rules. Thus, rule XXII, adopted in 1949, could not be revised so long as a handful of Senators—say, half a dozen—resolved to block the revision. If rule XXII puts civil-rights legislation in the coffin, section 3 nails, rivets, and welds the coffin shut.

It was on section 3 that Vice President Nixon was requested to give an opinion in the course of debate last week. He opined that the section is contrary to the Constitution, which states that each House of Congress "may determine the rules of its proceedings." Said the Vice President: "This constitutional right is lodged in the membership of the Senate and it may be exercised by a majority of the Senate at any time . . . the Senate should not be bound . . . by any rule which denies the membership of the Senate the power to exercise its constitutional right to make its own rules."

The Senate as a whole is the ultimate judge of the constitutionality at issue. Mr. Nixon's opinion, however, has encouraged opponents of the filibuster and lends hope that one day, by a decided attack on section 3, the campaign against the filibuster may drive on to victory.

[From the New York Times of January 8, 1957]

FIGHTING THE FILIBUSTER

Now life to the movement to restore democracy with a small "d" to the Senate of the United States has been given by two unexpected developments in the fight

against the filibuster. It now appears that there may actually be a chance to curb this weapon, the very threat of which has paralyzed senatorial freedom of action for so many years.

One hopeful factor is the astonishing size of the vote last week against killing a proposal to consider changes in the Senate rules. No fewer than 38 Senators—18 more than in 1953, when a similar motion was defeated—opposed the move of the Democratic and Republican leadership to continue with the same old rules under which it is almost impossible to shut off a filibuster. If 2 absentees and Senator-elect Javits had been present, the opposition to the leadership would have numbered 41—22 Democrats and 19 Republicans. In other words, a switch of only 7 or 8 votes would have done the trick. This is too close a margin for the comfort of the reactionary southern Democratic, midwestern Republican coalition that has held sway in the Senate for so long. It spells the end of the rules protecting and nourishing the filibuster—if not at this session, then surely in the relatively near future.

The other new and encouraging factor is the opinion that Vice President Nixon gave from his chair as presiding officer of the Senate. In answer to a parliamentary inquiry, the Vice President held in a precedent-setting opinion that under the Constitution a majority of the Senate has the right to adopt new rules at any time. As we suggested on this page last month, the language of article I, section 5—"Each House may determine the rules of its proceedings"—plainly means that each Senate has the right to adopt new rules or revise the old ones if it wants to.

If this is so, then what we called the built-in filibuster machine of rule XXII, forbidding any curtailment whatsoever of debate on a motion to consider changes in the rules, is invalid. That is the way the Vice President sees it, and we think he is right. Under the special arrangements cooked up by the majority leader last week, a test of this issue did not directly arise; but it surely will when the question is debated again. The Vice President's opinion, while not necessarily binding, is of great importance in opening the way to a change in the rules, which can only mean a weakening of the heretofore unassailable bulwark of the filibuster.

[From the Minneapolis Morning Tribune of January 7, 1957]

NIXON VERSUS FILIBUSTER

Vice President Nixon has greatly improved his standing among the liberals as a result of last week's unsuccessful fight to change the Senate rules.

The fight, in essence, was a fight against the filibuster and for civil-rights legislation. Its immediate target was rule XXII, which requires a two-third vote of the entire Senate to end debate. This rule has not only effectively blocked civil-rights legislation, it has been self-perpetuating in the sense that there is no way to shut off debate on any proposed change.

Last Friday Nixon, as Presiding Officer of the upper House, admitted that the Senate was a continuing body, since two-thirds of its Members hold over from one session to another. But he expressed the opinion that "the majority of the new existing membership, under the Constitution, have the power to determine the rules under which the Senate will proceed."

This opinion did not move the Senate to adopt new rules. But it gave new strength and heart to the move to curb the filibuster power. Nixon had dealt a heavy blow at the absurd notion that the Senate, because it was a continuing body, was not entitled to revise its own rules by majority vote. He had to put the weight of his influence and prestige on the side of civil-rights legislation. By doing so, he inevitably gained stature among Negro voters, many of whom had already deserted their traditional Democratic allegiance to vote Republican last November.

It is no secret that some of Nixon's enemies would have liked to see him emerge from Friday's test as an archconservative who had offended large groups of voters interested in civil rights. Instead, the Vice President entered the civil-rights arena more nearly resembling a knight in shining armor. This was not quite the case with Senator Knowland, Republican minority leader, who voted against the rules-changing motion. But even Knowland has promised that he will propose, and seek support for, a plan for relaxing rule XXII.

The tide of Senate opinion against this oppressive rule is rising fast, and it is a bipartisan tide. Both Senators Humphrey and Thyne voted for a revision of the rules Friday and Nixon's opinion is likely to have far-reaching repercussions. The Senate will some day rise up and strike off the self-imposed shackles of the filibuster. That happy day, in fact, may be just around the corner.

[From the Hartford (Conn.) Courant of November 27, 1956]

ANOTHER ASSAULT ON THE FILIBUSTER

A parliamentary body must operate under rules to achieve orderly and continuing progress in the making of laws. But rules are not always used to guide progress. They are often invoked as obstacles in the path of proposed legislation. A determined minority can find ways to avoid and obstruct the will of the majority where it is convinced the majority's purpose is undesirable. This is true the world over, whether it is demonstrated by Communists in the French Assembly or by radicals elsewhere.

One of the more aggravating examples is, of course, the filibuster in the United States Senate. Frequent attempts to strengthen civil-rights legislation in this country have run up against the last-ditch opposition of southern Senators. This has been true despite a majority plainly willing to guarantee individual rights. Some years back, in 1949, one of the almost successful assaults on this bastion was underway. The southerners received added support at the last moment when the rules were interpreted in such a way as to allow them to fight twice. This was the so-called Vandenberg ruling, upheld 40 to 41, which permitted the opposition to filibuster against taking up the measure they would normally filibuster.

A group of six northern Democrats has now proposed to attack this ruling. They will move to revise Senate rules to permit a simple majority to limit debate. This proposal is subject to unlimited debate itself. Messrs. Hubert Humphrey, Wayne Morse, Richard Neuberger, Paul Douglas, Pat McNamara, and James E. Murray are men of strong constitutions and stamina. Mr. Morse, in particular, has always been prone to unlimited debate, so long as he himself was talking. But they will need substantial support if they are to overturn this rule. They are appealing for such help, but are not likely to find much of it.

It is their own party that houses the most vigorous opponents of civil rights for Negroes. The Republicans, who have shown some signs in recent years of wanting to get action in this field, may be reluctant to break what they conceive as the tradition of the Senate. And all will be under strong compulsion to avoid getting involved in a fight and a filibuster lasting weeks at a time, when critical legislation may come without warning as a matter of urgency. The six men have a laudable aim, but dubious chances of success.

Yet it is a sign once again of the imperfections of parliamentary government that the Government cannot act to pass legislation to make sure that all men who are created equal are treated equally. If the issue were to be faced squarely, there is no doubt which way the vote would go. But it is concealed and mixed up in a vote on rules that confuses the general public, and allows one segment of the country willfully to block the intent of the Constitution.

[From the Christian Science Monitor of January 5, 1957]

SENATE CLOTURE WORKS ONE WAY

It is not quite accurate to say that the United States Senate has no effective way of closing debate. That it can even place rather narrow limits on discussion of certain subjects was illustrated in its disposal of the antifilibuster maneuver of civil-rights advocates.

This was a motion sponsored by northern and western Senators of both parties to provide that the Senate take up consideration of adoption of rules for itself in the 85th Congress. Had the motion been carried, the Senate might have considered revision of the cloture rule (rule 22), which requires a two-thirds majority not merely of those present but of the Senate membership in order to limit debate.

The theory has been that the Senate is "a continuing body" since two-thirds of its Members hold over from one session to another; hence that its parliamentary rules carry over without needing to be readopted. The effect of this theory, plus the fact that Rule 22 does not apply to debate on a change of rules, is to require in practice almost unanimous consent, since any Member may undertake to talk a proposed revision to death.

On the other hand, the proponents of the revision had to work hard to obtain one afternoon of debate on their proposition. The Senate majority leader filed a motion to table it, which in most parliamentary bodies must be voted upon immediately, but an agreement was reached which allowed some 6 hours of discus-

sion, after which came the rollcall—more favorable to their cause than 2 years ago.

Thus the Senate succeeded in applying to an important question of procedure very strict limits of debate which it in effect refuses to apply to substantive questions, such as legislation on civil rights. If the Senate persists in its theory of almost unamendable rules as a "continuing body" it may some day find itself in a very tight box.

[From the Denver Post of January 9, 1937]

THE FILIBUSTER IS HARD TO DEFEND

To hear David Lawrence tell it the Senate filibuster is an important bulwark for the defense of the Constitution and States rights against a Supreme Court which disregards law and is influenced by psychological theories instead.

The purpose of the filibuster, of course, is to stymie Senate passage by a simple majority of laws to insure that Negroes receive equal treatment with other citizens. The Constitution has always been interpreted to provide for the use of a simple majority vote in the Senate except in a few specific instances.

Unless it had been intended to have the Senate governed by majority rule in ordinary procedures there would have been no point in putting into the Constitution the provision that the Vice President shall have no vote unless the Senators are equally divided.

The Constitution specifies instances in which majority rule is not to apply: for example, a two-thirds vote to ratify treaties, two-thirds to convict in an impeachment case, two-thirds to expel a member, one-fifth to require a yeas and nays tally of votes, two-thirds to pass a bill over a Presidential veto.

To this list the advocates of the filibuster would add an extraconstitutional requirement for a two-thirds vote to get any civil rights legislation before the Senate. The concern for the Constitution which they profess sounds empty and hollow when it turns out to be no more than a desire to sabotage the constitutional authority to enact legislation by majority rule.

No legitimate States rights issue exists in connection with civil rights legislation unless we are willing to assume that the 14th amendment, adopted after the Civil War, really doesn't mean anything and really didn't change anything.

Before the amendment was adopted there was some question regarding the right of the Federal Government to interfere if State laws said some people could be held in slavery, deprived of the right to vote, etc.

The 14th amendment took jurisdiction over the privileges and immunities of citizens of the United States away from the States and made the Federal Government the protector of the legal equality of all persons, white or black.

When it is argued that the filibuster is necessary to keep Congress from interfering with States rights to discriminate between blacks and whites, the 14th amendment stands in complete rebuttal.

Segregationists are, of course, particularly unhappy with the Supreme Court. Hence the attempts to drag the Court into the argument over the filibuster power in the Senate.

We are told an arbitrary majority of the Court has taken away States rights. Actually, key decisions of the court on segregation questions have been unanimous. The majority was 9; the minority 0.

It is becoming popular to accuse the Court of arriving at its decisions on the basis of psychology. The argument runs this way: The Supreme Court decided, back in 1896, that Negroes would have equal rights in transportation with whites if they were furnished with separate but equal accommodations on trains.

That decision, so reversed by segregationists, was based on a certain psychology—a belief that a Negro's privileges would be protected if he were given a place in which to ride even though his separate status would be a constant reminder to him that he must consider himself inferior and unworthy to associate with whites.

In 1934 the Supreme Court held the theory that separate facilities for Negroes providing equal treatment under law was in error; that experience had shown feelings of inferiority resulting from segregation affected the hearts and minds of Negroes in a way unlikely ever to be undone.

Because the court upset the earlier decision, segregationists accuse it of disregarding law and precedent, although under our system of law courts are constantly reversing themselves when the errors of old decisions become obvious.

They also accuse it of making the new decision on the basis of psychology but they conveniently forget that a certain psychology was implicit in the 1890 decision, also.

There may be a good defense for the use of the filibuster. If so, Mr. Lawrence does not make it, in our opinion, and we can't imagine what it would be.

[From the New York Times of January 10, 1957]

CURRING THE FILIBUSTER

Joint sponsorship by Democratic Leader Lyndon B. Johnson and Republican Leader William F. Knowland of a resolution that would make it a little easier to curb filibusters is an indication of some progress. It is enough to show that the southern Democratic-Republican coalition protecting filibusters is on the defensive, and that there may be a real prospect of dealing a mortal blow to this evil, antidemocratic institution of forcible minority rule. But resolutions like this one have failed before.

What the majority and minority leaders are proposing to do is in effect to restore the situation to something better than its pre-1949 status. For 32 years prior to that the Senate had operated under a regulation providing that two-thirds of the Senators present and voting could shut off debate. It is this 1917 rule to which Senators Johnson and Knowland would now return, while expressly eliminating the present prohibition on limitation of debate on a motion to change the rules.

Two-thirds of those present and voting is an attainable figure on an antifilibuster vote, while two-thirds of the membership—or 64 Senators—is not. Even so, in the 32 years that the more moderate 1917 rule was in operation it was successfully invoked only 4 times. Senator Knowland himself in days past has supported a very much more drastic proposal—namely, the imposition of closure by a majority. Even such an ardent advocate of limiting debate as Senator Paul H. Douglas, of Illinois, intellectual leader of the current battle, is not now suggesting simple majority closure without strings. Senator Douglas' proposal is that debate may be shut off by majority vote only after 15 days.

While in any democratic parliamentary body, the minority has to have the fullest protection and must be given every opportunity to make itself heard, there is no sensible reason why it should be allowed permanently to block legislation desired by the majority. Sometimes, in the closing days of a session, the blocking is done by a minority of one. A good statement on the subject was made some years ago: "It seems to me that * * * this power * * * to completely block the legislative processes of government is too much power for any responsible person to want and far too much power for any irresponsible person to have." The speaker was Senator William F. Knowland.

[From the Denver Post of January 13, 1957]

TIME RISING AGAINST FILIBUSTERING

(By Barnet Nover)

WASHINGTON.—In politics as in boxing it is the wise man who knows when and how to roll with the punch.

On the eve of the reconvening of Congress many anticipated a knock-down, drag-out fight in the Senate between northern liberals and southern conservatives on the question of altering Senate rules to permit the curbing of filibusters. Only in that way, it was anticipated, could the existing barrier to civil rights legislation be removed.

The fight, it was predicted, would last for days and possibly weeks, split the Democratic Party right down the middle, while embarrassing the GOP members of the Senate as well, and leave scars that might take years to heal.

These predictions proved to be wide of the mark.

In the first place, the debate on the Anderson motion turned out, on the whole, to be unimpassioned and a gentlemanly affair and by unanimous agreement was limited to 6 hours.

The final vote—55 to 38—showed the majority were unwilling to go along all the way with the contention that the Senate is not a continuing body and,

like the House of Representatives, had to adopt rules of procedure each time a new Congress convened.

The vote was, in part, very deceptive.

Among the 55 who took a position in opposition to the Anderson motion were such men as Senators Knowland of California, Barrett of Wyoming and Mundt of South Dakota who, while unwilling to go along with the contention the Senate had to adopt rules every other year, also favored (as they explained in the course of the debate or later) some limitation on filibusters.

On the other hand, some of those who subscribed to the Anderson motion—Senator Allott, of Colorado, among them—indicated they did so in part because they felt the present system of unlimited debate needed curbing.

In view of this attitude Senate leaders on both sides of the aisle were wise not to let the matter rest with the vote on the Anderson motion. First Minority Leader Knowland and subsequently Majority Leader Johnson made it clear they favored having rule 22 liberalized, at least to the extent of making cloture possible by a vote of two-thirds of the Senators present rather than by two-thirds of the entire Senate.

The proposal, Johnson said, "appeals to me as being based upon the middle ground which is the strongest to stand upon. It would permit an orderly change of the rules but would recognize that the rules are continuing and not subject to change merely because of a temporary gust of political wind."

Then demonstrating anew that he is a political realist, Johnson said: "Unless the Senate takes advantage of the orderly procedures that are available, disorderly procedures will eventually prevail to the harm of the Nation and the different sections of the Nation."

His stand will not appeal to those who want a death blow given to filibusters. Nor will it appeal to those who for special reasons of their own favor unrestricted and unlimited debate whenever it is to their interests to have such a debate in order to kill legislation they lack the votes to defeat. But it will appeal to the great majority of the Senate.

This majority includes both Eisenhower Republicans and northern Democrats. The issue involved in the effort to curb filibusters is one that transcends party lines and as the fact that the vote for a change of the rules doubled since 1953 makes clear, the tide is rising. A shift of only eight votes would have meant victory for the Anderson motion.

What proved to be impossible in 1957 may be possible in 1959 and 1961. Lyndon Johnson was wise in deciding an attitude of stiff-necked hostility to any change in Senate rules was in the long run bound to prove self-defeating. He was wise in rolling with the punch.

[From the Sioux Falls Argus-Leader of November 30, 1956]

UNITED STATES SENATE MUST STOP FILIBUSTERS

If the United States Senate does not do something about filibustering, that august body will not justify the responsibility it shoulders.

Filibustering is an example of a worthwhile principle that is misused.

The thought behind it is that a Senator should have the right to say all that he might want to say about any subject under discussion. It is the privilege of unlimited discussion. The purpose of its establishment was to avoid situations where Senators could be muzzled by majorities who didn't want to hear them or were opposed to their viewpoints.

But this right has been grossly abused. Some Senators from time to time have employed it not as a means of expressing their viewpoint but of creating a delay to prevent a vote. They have gone on for hours and hours and for days and days.

Obviously no such amount of time is required for the full exposition of a Senator's viewpoint.

Certainly the United States Senate is smart enough to develop rules that would permit the full expression of viewpoints and eliminate what is termed the filibuster.

There have been tragic occurrences in the past—incidents where vital legislation was delayed and the business of the Senate virtually stymied because one Member held the floor.

[From the Sunday Denver Post of January 6, 1957]

PATIENCE WILL WIN SOONER OR LATER

The fight over the Senate filibuster rule has contained a lot of hairsplitting talk about whether the Senate is a continuing body or whether a new Senate comes into being every 2 years.

Behind this gobbledygook, which can hardly interest those of us who are not parliamentarians, is an all-important issue: Is Congress impotent to pass laws to protect civil rights, including Negro civil rights?

Obviously, present laws are inadequate to deal with those who want to keep Negroes in segregated schools, in segregated buses, in segregated housing, and those who use intimidation to keep Negroes from exercising the right to vote and the right to take their grievances to court.

What kinds of laws are needed? Well, opinions differ, but the Eisenhower administration spelled out a definite program of new legislation at the last Congress and may be expected to come up with similar proposals for the 85th Congress.

For one thing, the Attorney General needs authority to seek civil injunctions to stop interference with the rights of Negroes or any other persons. Under certain conditions a person who interferes with civil rights may now be tried under criminal procedures, but getting a conviction of a white defendant by a southern jury is often hopeless.

If he were armed with civil injunction procedures, the Attorney General could go before a judge and get an order restraining interference by a defendant with civil rights. No jury would be required.

The Eisenhower program would also:

Create a bipartisan commission to study civil-rights problems.

Focus attention on civil rights by setting up a civil-rights division in the justice department.

Permit Federal prosecution for intimidating voters in elections for Federal office.

Permit aggrieved persons to go into Federal rather than State courts with their civil rights complaints.

Allow the Attorney General to file civil suits to break up conspiracies to deprive citizens of their rights.

The filibuster fight, shorn of its technical terms, is a maneuver in the main battle to pass legislation of this kind. Actually, filibuster or no filibuster, there seems to be enough civil-rights sentiment in the United States Senate to pass at least part of this program.

The cause of civil rights is not a forlorn hope, as some would have us believe. No one can talk forever. Every filibuster must end eventually.

OPINION OF THE VICE PRESIDENT AS TO THE CONSTITUTIONALITY OF SECTION 3 OF RULE XXII OF THE STANDING RULES OF THE SENATE

[From the Congressional Record of January 4, 1957, pp. 139-140]

Mr. HUMPHREY. Mr. President, I had intended to inquire of the Chair relating to a matter or two, and I rise now for that purpose.

Prior to propounding my parliamentary inquiry, I should like to say that I note in the Record at page 10 a motion of the Senator from Texas, Mr. Johnson, to lay on the table the Anderson motion.

I also note that a unanimous-consent agreement was arrived at which would permit us to have an orderly discussion of this crucial matter of Senate rules today. Therefore, Mr. President, my parliamentary inquiry is this:

In light of these developments and in light of what transpired yesterday, and thus far today, under what rule is the Senate presently proceeding?

I should like to have the Chair's view on that question.

The VICE PRESIDENT. The Senator from Minnesota is aware that the answer to that question is that the Senate is proceeding under the unanimous-consent agreement. The Chair is cognizant of the fact that the Senator from Minnesota and other Senators will propound parliamentary inquiries relating to this subject and, consequently, it would perhaps be helpful if the Chair indicated by a general statement the Chair's opinion in regard to the parliamentary situation in

which the Senate will find itself after the vote which will be taken on the motion to lay on the table.

The Chair emphasizes this because, strictly speaking, a parliamentary inquiry is for the purpose of guiding the Senate in its deliberations so that the Senate will know the effect of votes or other actions which are taken on specific matters. Therefore, the statement which the Chair now makes relates specifically to the question of what the parliamentary situation will be as the Senate votes on the matter currently being discussed. That question, and others which have been discussed in the debate today, in effect, go back to the basic question, Do the rules of the Senate continue from one Congress to another?

Although there is a great volume of written comment and opinion to the effect that the Senate is a continuing body with continuing rules, as well as some opinion to the contrary, the Presiding Officer of the Senate has never ruled directly on this question. Since there are no binding precedents, we must first turn to the Constitution for guidance.

The constitutional provision under which only one-third of the Senate membership is changed by election in each Congress can only be construed to indicate the intent of the framers that the Senate should be a continuing parliamentary body for at least some purposes. By practice for 167 years the rules of the Senate have been continued from one Congress to another.

The Constitution also provides that "each House may determine the rules of its proceedings." This constitutional right is lodged in the membership of the Senate and it may be exercised by a majority of the Senate at any time. When the membership of the Senate changes, as it does upon the election of each Congress, it is the Chair's opinion that there can be no question that the majority of the new existing membership of the Senate, under the Constitution, have the power to determine the rules under which the Senate will proceed.

The question, therefore, is, "How can these two constitutional mandates be reconciled?"

It is the opinion of the Chair that while the rules of the Senate have been continued from one Congress to another, the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress.

Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional. It is also the opinion of the Chair that section 3 of rule 22 in practice has such an effect.

The Chair emphasizes that this is only his own opinion, because under Senate precedents, a question of constitutionality can only be decided by the Senate itself, and not by the Chair.

At the beginning of a session in a newly elected Congress, the Senate can indicate its will in regard to its rules in one of three ways:

First, it can proceed to conduct its business under the Senate rules which were in effect in the previous Congress and thereby indicate by acquiescence that those rules continue in effect. This has been the practice in the past.

Second, it can vote negatively when a motion is made to adopt new rules and by such action indicate approval of the previous rules.

Third, it can vote affirmatively to proceed with the adoption of new rules.

Turning to the parliamentary situation in which the Senate now finds itself, if the motion to table should prevail, a majority of the Senate by such action would have indicated its approval of the previous rules of the Senate, and those rules would be binding on the Senate for the remainder of this Congress unless subsequently changed under those rules.

If, on the other hand, the motion to lay on the table shall fail, the Senate can proceed with the adoption of rules under whatever procedures the majority of the Senate approves.

In summary, until the Senate at the initiation of a new Congress expresses its will otherwise, the rules in effect in the previous Congress in the opinion of the Chair remain in effect, with the exception that the Senate should not be bound by any provision in those previous rules which denies the membership of the Senate to exercise its constitutional right to make its own rules.

Senator TALMADGE. Counsel for the committee has handed the Chair a statement by Senator Ives, of New York, which we will insert in the record at this time.

(The statement referred to is as follows:)

STATEMENT OF HON. IRVING M. IVES, A UNITED STATES SENATOR FROM THE
STATE OF NEW YORK

These hearings, and the action which develops from them, will determine whether the Senate, for another Congress, is to make a decision on certain vital matters. The fundamental issue here is whether the Senate shall be an effective legislative instrument on all items which come before it, or shall continue to be the only legislative body in the country which can be utterly hamstrung whenever a minority feels like hamstringing it. The principle of majority rule is at stake.

We are concerned here specifically with the question of amending rule XXII and of repealing section 3 of rule XXII. I would invite your attention at this point to the historic opinion of the Vice President of the United States, delivered in the Senate chamber last January 4.

"Any provision of Senate rules adopted in a previous Congress," the Vice President said, "which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional.

"It is also the opinion of the Chair," the Vice President added, "that section 3 of rule XXII in practice has such an effect."

Now of course this is only one man's opinion, as the Vice President himself pointed out. A question of constitutionality can only be decided by the Senate itself, not by the Chair. But I would also point out that when the issue went to a vote that day, 38 Senators went on record as indicating they felt the Senate in each Congress had a right to change the Senate rules. This is the largest number of Senators ever thus to vote on this specific question.

In other words, times are changing, opinions are changing, and the time-honored institution of the filibuster is ultimately doomed. It can be kept alive a good long time, I admit—by use of the filibuster. The issue of whether or not the Senate is a continuing body can be filibustered before this subcommittee, in order to preserve the filibuster. The issue can be filibustered, and thus delayed, in the full committee; it can be filibustered on the floor.

But to my mind, the question of whether the Senate is a continuing body is not material. Let us assume it is a continuing body. Does that justify the assumption that the rules continue? The fact that something always has been done in a certain way is a footless argument for continuing to do it that way if a majority of the people concerned wish to do it differently.

Again I would invite your attention to the words of the Vice President last January 4, and I quote him:

"It is the opinion of the Chair that while the rules of the Senate have been continued from one Congress to another, the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress."

The Constitution says that the Senate "may determine the rules of its proceedings." The fact is that at present the Senate cannot determine the rules of its proceedings whenever a minority, and it can be a very tiny minority, is opposed to such a determination.

I believe that the Senate should have the power to act if 49 or more members believe that such action is necessary. This principle is set forth in Senate Resolution 28, which I introduced. I feel it is vital to an effective functioning of the democratic process that we do not continue to put ourselves in such a posture that the will of the minority can prevail in blocking a Senate decision. I also feel it is equally important that we do not, in amending the Senate rules, put ourselves in a position whereby a minority could take an affirmative action either; for example, vote cloture. Majority rule cuts both ways, or should; the important principle is that the majority prevail.

Nor am I so wedded to the language of Senate Resolution 28 that I would be unwilling to agree to a different requirement, to some other formula, so long as we are able to reach the general objective which we are seeking. That objective is to permit the Senate, while still giving everyone a full opportunity to have his say, to come to grips finally with issues which affect so many of our citizens.

I fervently hope this subcommittee will help to bring to a head this issue of a change in the Senate rules during this session of the Congress, for sooner or later the change must come.

Senator TALMADGE. The next witness is Mr. Tyre Taylor from the Southern States Industrial Council.

Will you come around, please.

STATEMENT OF TYRE TAYLOR, GENERAL COUNSEL, SOUTHERN STATES INDUSTRIAL COUNCIL

Mr. TAYLOR. Mr. Chairman, I have 4 or 5 extra copies of my statement.

My name is Tyre Taylor. I appear here as counsel for the Southern States Industrial Council, the headquarters of which are in the Stahlman Building in Nashville, Tenn. My own address is 1010 Vermont Avenue, Washington, D. C.

The council is a regional organization representing all lines of industry in the 16 Southern States, from Maryland to Texas, inclusive. It is governed by a board of, I believe, 103 officers and directors, the last meeting of which was in Hot Springs, Va., on May 23-25 of this year.

At that time resolutions were adopted pursuant to which, Mr. Chairman, I appear here today.

I start with two assumptions, both of which I believe to be valid:

(1) The effort further to limit debate in the Senate would never have gained its present impetus and momentum but for the existence of the so-called civil rights issue; and

(2) The effort further to limit debate in the Senate is aimed primarily at the South, the source of much—but by no means all—opposition to so-called civil rights legislation.

The council, being a southern organization and opposed to all so-called civil rights legislation, is opposed to further limitation of debate in the Senate. However, in taking this position, it is guided by no considerations of a narrow or sectional nature. Rather, it raises and attempts to answer a question which should be of interest to all Americans and to their elected representatives in Congress. The question is:

Are the movers of this effort to afford additional protection to a few so-called civil rights endangering other rights—right of all the people—minorities as well as majorities—which are far more precious?

In other words, are they, in effect, proposing that you throw out the baby with the bath water?

Thomas Jefferson raised the same question when he said in his Manual of Parliamentary Procedure:

The rules of the Senate which allow full freedom of debate are designed for protection of the minority, and this design is part of the warp and woof of our Constitution. You cannot remove it without damaging the whole fabric. Therefore, before tampering with this right, we should assure ourselves that what is lost will not be greater than what is gained.

What are some of the things we stand to lose if Senate rule XXII is changed to provide for cloture by less than a two-thirds vote of a constitutional majority?

One of the things we should lose is the present unique dignity and prestige of the Senate itself.

In the House, majority rule and majority control of the time for debate are not only fully justified, but a practical necessity in so large a legislative body. Moreover, majority rule in the House is justified for another reason. A Member of that body represents people—the people of his district—approximately 1 of 435 parts of the total population.

But the Senate was established and now exists on an entirely different basis.

When the framers of the Constitution were faced with the problem of what to do about the great disparity in size and population of the States—Georgia, Mr. Chairman, was then the largest State, and Rhode Island the smallest—and were confronted by the firm determination of the smaller States to have somewhere equality of voting power, they hit upon a solution which has since challenged the admiration of the world.

A Senate was provided for—a continuing body in which each of the States—large and small, rich and poor—should have absolutely equal representation.

It was further provided in the Constitution that no State could be deprived of its equal representation in the Senate without its own consent.

Thereafter, until the advent of the First World War, the Senate operated under a rule of absolutely free debate.

Someone has said that it served as a saucer into which the hot actions of the other body could be poured to cool.

Senator TALMADGE. Will the witness yield at that point?

Mr. TAYLOR. Yes, sir.

Senator TALMADGE. I believe George Washington made that statement; did he not?

Mr. TAYLOR. Thank you, sir. I did not know who had made it.

"That remarkable body," William Gladstone once remarked of the Senate, "the most remarkable of all the inventions of modern politics."

A Senator—any Senator—could get on the floor, present all the facts as he saw them in connection with any issue, turn it inside out and upside down, test it, inquire into its fairness, justice, and practicability—in other words, and to an extent limited only by his own ability, turn the light of truth into all the dark places.

Indeed, it was his solemn obligation to do this. He represented his State. He was his sovereign State's ambassador to the Federal Government in Washington.

Of all the statements I have seen on this subject, one by the late Senator Henry Cabot Lodge is perhaps the most penetrating. As a Representative, Mr. Lodge believed in cloture by majority vote, and himself was the author of a force bill. Then he came to the Senate where, in the course of time, his views radically changed. He said:

* * * Cloture is a gag rule. It shuts off debate. It forces all free and open discussion to come to an end. Such a practice destroys the deliberative function which is the very foundation for the existence of the Senate. It was the intent of the framers of the Federal Constitution to obtain from the upper Chamber of the Congress a different point of view from that secured in the House of Representatives. Thus the longer time, the more advanced age, the smaller number, the equal representation of all States. Careful and thorough consideration of legislation is more often needed than the limitation of debate.

No wonder the Senate of the United States became known and revered as the last bastion of free, untrammelled debate.

Do you want to give this up and become—and I say this with no intention whatever of disparaging the other body—simply a second, albeit numerically smaller, House of Representatives?

And can you give it up without irreparable injury to the cause of free speech generally, and to the whole delicate system of checks and balances upon which our Government rests?

We don't think you can.

Consider some of the risks—the dangers—involved.

It is only stating the truth to say that many measures pass the House without the public ever having had an opportunity to understand them. This is because of the necessity for limited debate.

But here—and I cite 169 years, many of them years of the greatest emergency, of experience with virtually unlimited debate in support of this—no such necessity exists. Is it good or is it bad that before laws are passed affecting the lives of some 170 million people, they should somewhere be exposed to full and free debate?

Then there is the ever-present danger of partisanship—"the baneful effects of party spirit"—about which Washington warned. Suppose one party—either party—gains a substantial majority in the Senate. There was a time following the 1936 election when the Democratic Party had 76 votes out of the 96, and the Republicans had only 16—the other 4 votes were among the Progressives and Farmer-Laborites.

Perhaps at some other time this ratio will be reversed. The point is that to keep party spirit from running wild, there is need for full and free debate.

A little more than a century ago, Lord Macauley wrote an American friend of his:

Your Constitution is all sail and no anchor.

He then made this somber prediction. He said that we—

would not be ravaged by Huns and Vandals from without, as was the Roman Empire in the fifth century, but by Huns and Vandals (who) will have been engendered within your own country by your own institutions.

I do not know whether Lord Macauley was talking about modern organized pressure groups or not, but he could have been. And it is worth noting, in passing, that the cloture rule as it stands today is, in the words of Senator Stennis—

the last bulwark of strength against the demands of these groups.

Jefferson said the rule for unlimited debate is for the protection of minorities; and on the civil-rights issue, the southern people are said to be in the minority. But take any minority—religious, social, or political—that finds itself under serious, sustained attack, they know that they have a last and effective place of refuge: The floor of the United States Senate.

But, it is said, "the majority should rule."

I say to you with all the emphasis at my command that there are many situations—and this is one of them—where the majority should not rule—period.

The Constitution is based upon the philosophy, first enunciated in the Declaration of Independence, that all men are endowed by their Creator with certain inalienable rights—rights of which he may not divest himself—rights which are inherent in man as a child of God and which cannot lawfully be taken away from him by any earthly

power. Among these are enumerated the right of life, liberty, and the pursuit of happiness.

The Constitution itself contains many limitations upon majority rule. Thus, the majority may not take my property without due process of law, or quarter troops in my house without my consent.

The right of trial by jury may not be taken away by the majority—or is this provision in the Constitution any longer valid? Apparently the Attorney General of the United States has found a way around it.

I plead with you, gentlemen, to see this issue in its true perspective.

You are dealing here not with a simple change in the procedural rules of the Senate.

You are dealing with the fundamental principle of the rights of the States as written into the Constitution.

Incidentally, the provision of the Constitution that no State may be deprived of its suffrage in the Senate without its consent is the only part of the Constitution which cannot be repealed or amended except by unanimous consent of all the States. Senator Brandegee called the Senate the "Forum of the States."

You are dealing with the carefully wrought system of checks and balances upon the preservation of which our freedom as a Nation depends.

You are dealing with the last refuge of oppressed minorities—the last remaining free forum where unpopular views may find full and free discussion.

You are being asked to downgrade the Senate itself as an institution; to pervert the all-important deliberate purpose the framers of the Constitution meant that it should serve; to make it subject to the passing whims of a temporary majority; and to surrender a part of your own dignity and power as lawmakers.

So I return to my original question: Are the movers of this effort to afford additional protection to a few so-called civil rights endangering other rights—rights of all the people, minorities as well as majorities—which are far more precious?

We think they are.

Thank you.

Senator TALMADGE. Mr. Taylor, I want to congratulate you on that statement. I think it is one of the finest that has been presented to this committee.

Mr. TAYLOR. Thank you, Senator.

Senator TALMADGE. Mr. Javits, do you have any questions?

Senator JAVITS. Yes, I do.

Mr. Taylor, we appreciate your coming here, and we appreciate your point of view; although I do not agree with it. I nevertheless appreciate its being exposed for consideration, and I think that is what we are here for.

So I am glad you are here, and I should like, if I may, to take a very few minutes to discuss some of these questions with you.

Mr. TAYLOR. Thank you, Senator.

Senator JAVITS. I gather you are a lawyer, Mr. Taylor, from the way you read the statement. Are you, by profession, a lawyer?

Mr. TAYLOR. Yes, I am.

Senator JAVITS. I thought you were.

Mr. Taylor, I am very much interested in this. I notice a sentence at the very beginning of your statement which says:

* * * being a southern organization and opposed to all so-called civil rights legislation * * *

Now, are the two synonymous, really? I mean, is that the whole character of the South: Being a southern organization, it is ipso facto opposed to every civil rights—

Mr. TAYLOR. I start off with the assumption up there, Senator, that this is primarily aimed at the South; and then I follow up with a statement in our declaration of policy: that the council is opposed to all so-called civil rights legislation.

Senator JAVITS. I was more interested in the sectional aspect of it. You said "being a southern organization." Are we to assume that every southern organization is opposed to civil rights legislation?

Mr. TAYLOR. No, I do not think that necessarily follows, but the council is.

Senator JAVITS. You say this is aimed primarily at the South. Of course, on Friday, the South did a little work on its own in connection with the dam, a great many other people did not like. So you might say that the East might say or the Middle West might say it is aimed especially at it.

Would you feel, therefore, that this effort is really—are you really serious about that that, that it is aimed specifically at the South?

Mr. TAYLOR. I have not heard of any agitation coming out of the South for it; and, on the other hand, I have heard much agitation coming out of the North.

Senator JAVITS. Of the other sections of the country?

Mr. TAYLOR. Yes.

Senator JAVITS. I noticed also a very interesting allusion to full and free debate in respect to some research you obviously did, which is fine. In 1936, you said there were 76 votes out of the 96 which were Democratic, and the Republicans had only 16.

Mr. TAYLOR. That is right.

Senator JAVITS. Now, on that basis, if the majority were just running wild, it could effect cloture immediately, could it not, even under the present Rule? You gain nothing out of that.

Mr. TAYLOR. Of course, that was an extraordinary situation. But at the same time, Senator, I think you have got to recognize the fact of partisanship.

Take over in the House, as Senator Hill said when he was opposing this when it was up in 1952, I believe, the House does follow the leadership, and it is a partisan decision usually.

So that I do think there is some danger of that partisanship running wild.

Senator JAVITS. Well, I point out that under a top-heavy majority, the majority could work its will through cloture. So that you gain nothing out of the present rule, and it leads me to my next question, Mr. Taylor.

You understand, I really am seeking enlightenment as to your point of view. I think, incidentally, it is quite a representative one from the position from which you speak, and I think it should be elucidated as fully as possible. It leads me to this:

Are you satisfied with the present rule, or do you wish no rule at all? The present rule, as you know, gives cloture by a constitutional two-thirds.

Mr. TAYLOR. Yes, I am satisfied with the present rule, for this reason, Senator: In times of national emergency, as in 1918-19, and 1939-40, it should be possible for a third of a constitutional majority to limit debate in case there are just a small number of what have been called willful men who are attempting to obstruct the program.

Senator JAVITS. But, of course, the rule is not limited to emergencies. It can be applied at any time by a two-thirds ruling.

Mr. TAYLOR. Well, it is not likely to be applied except in emergencies.

Senator JAVITS. And your view upon that is not changed by the fact that you did have a 76-16 Senate?

Mr. TAYLOR. No, it is not.

Senator JAVITS. It is not.

I notice you also make the flat statement that the majority should not rule.

Mr. TAYLOR. That is right.

Senator JAVITS. Do you qualify that in any way? Would not Government be paralyzed if the majority should not rule?

Mr. TAYLOR. I say there are many situations the majority should not rule.

Senator JAVITS. You limit it, however. You do not say every situation?

Mr. TAYLOR. That is right.

Senator JAVITS. And also I noticed that you speak of the right, one of the enumerated rights of the Constitution is the right of life, liberty, and the pursuit of happiness. Do you feel that it is a denial of the pursuit of happiness to deny a man a job because he is a Negro?

Mr. TAYLOR. I believe that that is in the Declaration of Independence.

Senator JAVITS. Yes; I said it is.

Mr. TAYLOR. I thought you said the Constitution.

Senator JAVITS. I beg your pardon.

Mr. TAYLOR. Would you restate your question?

Senator JAVITS. I asked whether you believe, or whether or not you believed that it was a denial of the right to the pursuit of happiness if you deny a man a job because he is a Negro.

Mr. TAYLOR. Well, are you talking about the administration's civil-rights bill now?

Senator JAVITS. I am just asking a question of moral and constitutional right.

Mr. TAYLOR. If you are talking about the administration's civil-rights bill, of course, as I understand it, that relates to voting.

Senator JAVITS. Well, I am not talking about that, Mr. Taylor. I just ask you this flat question: You say that one of the things we must protect very carefully is the pursuit of happiness, that right.

I ask you whether you consider it a denial of that right to deny a man a job because he is a Negro.

Mr. TAYLOR. Yes; I would.

Senator JAVITS. Well, is it not a fact that Negroes are denied jobs every day in States of the United States because they are Negroes, managerial jobs?

Senator TALMADGE. Will the Senator yield at that point?

Senator JAVITS. Yes.

Senator TALMADGE. Can you name one who has ever been denied a job?

Senator JAVITS. I can dig through the records and give you testimony.

Senator TALMADGE. You cannot at this time name one?

Senator JAVITS. That is not at this time, Senator Talmadge.

Senator TALMADGE. I am asking you if you can name one, and name his home address.

Senator JAVITS. I cannot do it now, but I can give you 150 in hearings before senatorial committees.

Senator TALMADGE. I just ask you whether you can give me the name of one.

Senator JAVITS. Give me the name of 1 of my constituents, of which there are 17 million.

Mr. TAYLOR. I do not know of any Negroes, Senators, that have been denied a job by reason of their color.

Senator JAVITS. You do not?

Mr. Chairman, I ask unanimous consent that I might introduce into the record at this point, evidence upon that question adduced before congressional committees.

Senator TALMADGE. I have no objections, but I do not understand how that relates to rule XXII. Personally, Senator, I cannot see that there is any relation between it and this hearing.

You insert it in the record, if you wish. I want the hearing to be broad, so the full scope of this question can be heard. If you wish to insert it under those conditions, there is no objection on my part.

(A reference subsequently supplied by Senator Javits is as follows: An example of deprivation of employment because of race, creed, or color occurs in Discrimination and Full Utilization of Manpower Resources, hearings before the Subcommittee on Labor and Labor-Management Relations of the Committee on Labor and Public Welfare, 82d Cong., 2d sess., on S. 1732 and S. 551, pp. 158-159.)

Senator JAVITS. Do you feel that a denial of the right to vote is a denial of a fundamental constitutional right, Mr. Taylor?

Mr. TAYLOR. I think it is, Senator; but, on the other hand, I think there is ample law and legislation on the books now to protect that right.

Senator JAVITS. You feel that is so?

Mr. TAYLOR. Yes.

Senator JAVITS. Now, Mr. Chairman, I ask that reference be made in these hearings to the testimony of the Attorney General of the United States before the Subcommittee on Constitutional Rights, a subcommittee of the Judiciary Committee of the Senate, detailing countless instances in which Negroes have been denied the right to vote in the South.

Senator TALMADGE. We might have an understanding here. Is this a civil-rights hearing, or is it going to relate to rule XXII?

Senator JAVITS. I am trying very hard to deal with the points made by this witness.

Senator TALMADGE. You are asking extraneous questions which are totally irrelevant to rule XXII, and you know it.

Senator JAVITS. I do not think so, Mr. Chairman, but I am perfectly willing to have the record make the reference, and that does not introduce all the testimony here.

Senator TALMADGE. I have no objection to your putting anything in the record you may wish, but insofar as practical, I want us to confine the hearing to its stated purpose.

Senator JAVITS. I think the witness, Mr. Chairman, has testified that the purpose of not amending rule XXII, in his judgment, is to block civil-rights legislation. So I am making reference to the urgent need for the very thing which an unamended rule XXII blocks, according to the witness.

Senator TALMADGE. Of course, the statement does not state exactly the conclusion which you draw therefrom.

I have no objection to your inserting anything in the record, but I think we ought to have an understanding as to whether we are going to get off on tangents.

We could hear testimony as to when Arizona was admitted to the Union, but it would not shed any light on the issue before this committee.

(The reference subsequently supplied by Senator Javits is as follows: Civil Rights—1957, hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 1st sess., p. 5 and pp. 237-243, inclusive.)

Senator JAVITS. Mr. Chairman, the witness apparently does think it sheds light on the matter before the committee, and so I am joining with the witness in elucidating the testimony which he has given.

Now, one other question, and we will go on. I do not want to detain you too long, Mr. Taylor, because I think we are very familiar with your point of view.

Do you feel that true deliberation has been had by now on the various civil-rights bills, like the antilynching bill, the anti-poll-tax bill, the FEPC bill?

Mr. TAYLOR. Apparently not, because a lot of people seem to want to speak on them.

Senator JAVITS. I call your attention to the fact we have been considering the antilynching bill for about 25 years, the anti-poll-tax bill for 15 years, the FEPC bills for 11 years. There have been all kinds of hearings, debates in the House and Senate.

Do you feel that that does or does not represent true deliberation on the subject?

Mr. TAYLOR. I will make the same answer I did before, Senator, and add—

Senator JAVITS. O. K.

Mr. TAYLOR (continuing). That this rule is fundamentally a rule to protect States and States rights, and that so long as a Senator feels that, in the protection of his State, he needs to talk further on anything, I think he should be permitted to do so.

Senator JAVITS. Well, you really feel, therefore, do you not, Mr. Taylor, there should be no limitation on debate whatever?

Mr. TAYLOR. No. As I said a while ago, Senator, I think that the present rule is a good one, because it does permit limitation of debate in case of great international emergency.

Senator JAVITS. I notice you referred to Jefferson. I am sure you know, Mr. Taylor, from your research, that in Jefferson's time they had the rule of the previous question, which permitted a majority to shut off debate.

Now, is that, do you feel, consistent or inconsistent with your own position?

Mr. TAYLOR. Well, you can quote Jefferson on almost every side of every question.

Senator JAVITS. Well, this is not a quotation. Jefferson's Manual provided for the previous question.

Mr. TAYLOR. I do not believe in the previous question, no, sir. That is where I part company with Mr. Jefferson.

Senator JAVITS. Well, thank you, Mr. Taylor. I do not wish to protract your testimony.

Senator TALMADGE. Mr. Taylor, I appreciate your statement. It shows very great research, and I congratulate you on the excellence of your presentation.

Mr. TAYLOR. Thank you, Senator.

Senator TALMADGE. Mrs. Alexander Jenkins?

STATEMENT OF MRS. ALEXANDER JENKINS, BALTIMORE, MD.

Mrs. JENKINS. Senator Talmadge, Senator Javits, I appreciate the privilege of speaking before your committee this morning.

Senator TALMADGE. What group do you represent, Mrs. Jenkins?

Mrs. JENKINS. I represent no group.

Senator TALMADGE. You are here as an individual?

Mrs. JENKINS. I am an individual. I was a former chairman of the Maryland Committee for Representative Government.

I have asked to appear in opposition to changing rule 22 because of my observation of the sessions and hearings, over a period of 6 years, of the City Council of Baltimore.

I have learned firsthand of the precious right we American citizens still retain under our form of government. The more extensive the hearings and debate on the floor, the sounder is the resulting action.

Your true statesman does not fear unlimited debate. He is willing to accept full information on the issue. He welcomes the shared responsibility of an enlightened public opinion.

I am not equipped to discuss the fine points of the seven proposals for changing rule 22, but I am prepared to present material that proves its value.

The longest filibuster by one man in the Senate came in 1953, when Senator Wayne Morse spoke 22 hours and 26 minutes against a bill giving rights to offshore oil to the States. In the course of his remarks, the Senator discussed topics such as events in his own political life, filibusters, the Korean war, psychology, and the decline of American civilization.

Senator Morse is the author of pending resolution 21 and a sponsor of resolution 17, to restrict debate in existing rule 22.

Gentlemen, the authors of the Constitution regarded the Senate as a continuing body. Only one-third of the Senate is elected every 2 years. The Constitution does not provide for the adoption of new rules every 2 years.

Senator Taft stated in the Congressional Record, January 16, 1953, page 99, and I quote:

We must disregard the question of civil-rights issues as affected by the rules predicated on the ground that here is an abuse which justifies the setting aside of the precedents of the Senate. I say there is no abuse. I say we have rules and we can operate under them.

Many a filibuster has been conducted with patriotic purpose and grim determination. Senator Carter, of Montana, in the closing hours of the 56th Congress, talked to death the pending rivers and harbors bill in a speech of 14 hours. Had the bill been brought to a vote, it is certain that it would have been passed, and that it would have been vetoed. But that Senator Carter was not thwarting the will of the majority was evidenced by the fact that at the end of his oration he was surrounded by a throng of grateful Senators and Representatives eager to thank him for saving them from the necessity of voting on a bill in which they did not believe, but which contained "pork" for every one of their States.

In the special session of the Senate in March 1917, Senator La Follette vigorously opposed a proposed rule to effect cloture. He said, and I quote:

Believing that I stand for democracy, for the liberties of the people of this country, for the perpetuation of our free institutions, I shall stand while I am a Member of this body against any cloture that denies free and unlimited debate.

Sir, the moment that the majority imposes the restriction contained in the pending rule, that moment you will have dealt a blow to liberty. You will have broken down one of the greatest weapons against wrong and oppression that the Members of this body possess.

Vice President Charles G. Dawes, immediately after taking his oath of office, scathingly denounced the Senate rules and demanded their thoroughgoing reform. The most formal and outspoken opposition to the Dawes program of reform came from the American Federation of Labor in their national convention. It unanimously condemned the Vice President's campaign to abolish free speech in the United States Senate, and urged that—

every publicity be given to the denunciation by labor of the Dawes scheme which does not come from the people but emanates from the secret chambers of the predatory interests.

Their statement continued:

For several months the Vice President of the United States has conducted an agitation for the purpose of abolishing free speech in the United States Senate, the only forum in the world where cloture does not exist, and where members can prevent the passage of reactionary legislation. The railroad industry, the great oil industry, and other great industries in the United States, want to make it possible for a handful of men in the United States Senate to control all legislation. It is a vicious idea, a vicious purpose, to which the Vice President of the United States has loaned himself.

That is the end of the quote from the American Federation of Labor in convention.

Men of longer memories could but contrast the sweeping condemnation erupting from a Vice President who, at the moment, was facing the Senate for the first time, with the far more tolerant judgment which had been expressed by Vice President Stevenson as he left the office after 4 years of service as the Senate's presiding officer. Vice President Stevenson said this:

It must not be forgotten that the rules governing this body are founded in deep human experience, that they are the result of centuries of tireless effort in legislative halls to conserve, to render stable and secure, the rights and liberties which have been achieved by conflict. By its rules the Senate wisely fixes the limits of its own powers. Of those who clamor against the Senate and its methods of procedure, it may be truly said they know not what they do.

That is the end of the quotation.

In the weeks which followed the Vice President's explosion, one significant fact was the frequent avowal of a belief that the Senate rules had at any rate manifested the qualities of their defects; that the filibuster had killed more bad bills than good ones.

Said the Senate minority leader:

In no single instance has a measure of outstanding importance defeated through resort to filibuster been subsequently revived. In every case where a considerable minority has resorted to the utmost extremity to prevent a vote upon a bill, it has been based on the contention that the proposal is inconsistent with the spirit of American institutions, violative of the fundamental principles of our Government and, if thoroughly understood, would be rejected as subversive of American civilization.

It was the intent of the framers of the Constitution to secure from the Senate a different point of view, a more mature judgment than that of the House. To those ends the longer term, the more advanced age, the smaller numbers, the equal representation, were all expected to conduce. What is sorely needed in Congress is seldom greater speed, but always more thorough consideration in lawmaking.

In these days of weakened party discipline, the temporary majority that group combinations may today give to a pending measure may by no means indicate a responsible majority's conviction that the measure is wise; nor is it safe to assume, in blocking a given piece of legislation, a minority or even a single Senator is thwarting the will of a majority of the Senate.

Professor Lindsay Rogers, of Columbia University, in the preface of his book, *The American Senate*, states, and I quote:

The undemocratic usurping Senate is the indispensable check and balance in the American system, and only complete freedom of debate permits it to play this role. Its power comes in large part from the guillotine to which the House of Representatives submits, a procedure which has attracted scant attention, and is the more indispensable because it is directed against government by favorable publicity through the medium of the White House "Spokesman." Adopt cloture in the Senate, and the character of the American Government will be pronouncedly changed.

Gentlemen, it is my earnest hope that in these times of confusion and controversy, the integrity of rule 22 will be undisturbed.

I thank you for your courtesy in permitting me to make this statement.

Senator TALMADGE. Mrs. Jenkins, we appreciate very much your coming before us with your very fine statement.

Any questions?

Senator JAVITS. I have no question on the statement, Mrs. Jenkins. I wondered how you heard about these hearings.

Mrs. JENKINS. Yes. I subscribe to the Congressional Record.

Senator JAVITS. So you knew about them.

Mrs. JENKINS. Yes, and I am a very avid reader of it.

Senator JAVITS. Thank you.

Senator TALMADGE. Thank you so much.

Mrs. JENKINS. Thank you.

Senator TALMADGE. The next witness is Mr. Andrew J. Biemiller, legislative director, AFL-CIO.

Senator JAVITS. Mr. Biemiller is one of my former colleagues in the House, Mr. Chairman, and I am very glad to see him here in a new role today.

STATEMENT OF ANDREW J. BIEMILLER, LEGISLATIVE DIRECTOR, AFL-CIO, WASHINGTON, D. C.

Mr. BIEMILLER. Thank you, Senator.

Mr. Chairman, my name is Andrew J. Biemiller. I am director of the department of legislation of the American Federation of Labor and Congress of Industrial Organizations, and I am appearing here today to present the views of our organization on Senate rule 22.

Let me say at the outset that we recognize that the rules of the Senate are a subject for internal Senate determination. As a former Member of Congress, I personally recognize that the rules of procedure are established by each House at its own discretion.

We are pleased, however, that Senators themselves, and this committee in particular, recognize that the effects of the operation of rule 22 are felt far beyond the confines of the Senate Chamber.

Rule 22 now provides that debate on any issue may be closed only after two-thirds of the Senators duly chosen and sworn vote to close it. In a full Senate, this means that 64 Senators, or 15 more than a constitutional majority, must rally together to close debate on any measure, no matter how important it may be to the well-being of the people of our Nation, so that the majority may be able to act.

The effect of this rule is that a minority of only 33 Senators can at any time thwart the will of a majority of the Senate, a majority which otherwise could conclusively dispose of the business before the Senate.

Mr. Chairman, our Nation politically is a liberal democracy. It is founded on the principle that the majority will create and effectuate the policies of the Government. This principle is followed in every phase of our political life and at every level of Government, local, State and National.

The majority of the people who vote on Election Day select the men and women who will make our laws and who will execute them. In our legislatures, local, State and National, laws are adopted and issues are resolved on this same principle of majority rule.

Within this framework of majority rule, we retain constitutional guaranties which protect the basic rights of individuals, rights which cannot be taken from them by even the largest of majorities.

With these two principles of majority rule and minority rights, our forefathers created, and we carry on, probably the greatest and most successful system for free Government that the world now knows or has ever known. But in this one instance we can and should correct a glaring example of undemocratic procedure.

In its effect, rule XXII simply means that whenever a minority of the Senate so desires, it can enforce upon the Senate, not a system of simple majority rule, but one in which a two-thirds majority is required for the transaction of Senate business.

Through the enforcement of rule XXII, majority rule, 1 of the 2 basic principles of our form of Government, is abandoned to minority rule.

It is no defense to say that the rule is seldom invoked, that filibusters are rare, and that few issues arouse sufficient opposition to cause a filibuster. Since the adoption of rule XXII in 1917, there have been some 22 attempts at cloture. Of these 22 attempts, only 4 have been successful in cutting off debate; and of these, none has been more recent than 1927.

Of these 22 cloture votes, 8 have been attempts to cut off debate and bring to a vote measures dealing with the civil rights of our people.

Since 1938, 2 attempts to bring to a vote an antilynching bill, and 3 attempts to bring to a vote an FEPC bill, have failed. Three antipoll tax bills have met a similar fate.

Thus, in 8 of 22 cloture attempts, the proposed legislation which was defeated by being talked to death was civil rights legislation; legislation ironically intended to enhance the protection of minority rights.

It is interesting to note that the platform of both major political parties in 1956 called for Federal action to implement the civil rights planks in those platforms. For example, the Democratic platform said:

We will continue our efforts to eradicate discrimination based on race, religion or national origin. We know this task requires action, not just in one section of the Nation, but in all sections. It requires the cooperative efforts of individual citizens and action by State and local governments. It also requires Federal action.

In somewhat more limited language, the Republican platform also calls for Federal action:

This administration has impartially enforced Federal civil rights statutes, and we pledge that it will continue to do so. We support the enactment of the civil rights program already presented by the President to the second session of the 84th Congress.

In addition, the Democratic platform specifically states:

In order that the will of the American people may be expressed on all legislative proposals, we urge that action be taken at the beginning of the 85th Congress to improve congressional procedures so that majority rule prevails and decisions can be made after reasonable debate without being blocked by a minority in either House.

If these phrases are to be more than mere words, representatives of these two great political parties must take action to amend Senate rule XXII; otherwise, the implementation of their platforms can be accomplished only with great effort under the most adverse conditions, while other important legislation is delayed or sidetracked. Unless and until that is done, the American people can only assume that that political platform is a jumble of words signifying nothing.

From the time of its founding convention, the American Federation of Labor and Congress of Industrial Organizations has firmly supported the principle of majority rule for the Senate of the United States.

At that convention a resolution was unanimously adopted which states in part:

As an essential preliminary to the enactment of civil rights legislation, we urge that the rules be so amended that the will of the Congress may not be stulti-

fied by a recalcitrant minority. Rule XXII should be changed to permit a majority of Senators, present and voting, to limit and close debate.

In August of 1956 when AFL-CIO George Meany appeared before the platform committee of the Democratic National Convention to present labor's views on national issues, he said :

In order to assure that dilatory tactics will not be used to block the enactment of civil rights legislation, Congress should amend its rules so that its will cannot be thwarted by a recalcitrant minority. In particular, Senate rule XXII should be amended to permit a majority of Senators, present and voting, to limit and close debate.

In his appearance before the platform committee of the Republican National Convention, Secretary-Treasurer William F. Schnitzler used identical language in calling for a change in the rule.

Finally, in letters to Vice President Nixon and Senators Lyndon Johnson and William Knowland, the majority and minority leaders, in December of 1956, President Meany said :

It is our opinion that the present rule has been a weapon in the hands of those desiring to block progressive legislation. The constantly overhanging threat of filibuster should be removed from the Senate Chamber. We trust that as the leader of your party you will do everything in your power to have the present undemocratic rule changed so that a minority may not block the will of the Congress.

Mr. Chairman, the AFL-CIO's position is dictated primarily by the apparent need for more comprehensive Federal legislation in the field of civil rights, because such legislation has been the subject of filibusters most often in the recent past.

But the issue goes far beyond civil rights. It extends to all measures of a controversial nature. It is an issue which affects the very fiber of our democratic form of government, and it is one which should be resolved expeditiously, and resolved in favor of majority rule.

Let it not be assumed, however, that we want the Senate to ride roughshod over the very real minority right which does exist in parliamentary debate. In every situation in which policies are being formed, which affect the life, liberty, and property of people, the right of a minority to speak freely, openly, and at length in an effort to dissuade the majority from its intention is significant and fundamental.

This right should be amply provided for in any change in rule XXII which this committee sees fit to make.

Senator Paul Douglas has suggested that a rule providing for cloture upon the affirmative vote of a simple majority of those Senators present and voting should have a limitation allowing at least 15 days' debate before the cloture motion could be offered. Certainly this provision would be adequate to insure that minority views could be fully presented.

But once the views of the minority have been presented in detail, and emphasized by its adherents, the purpose of full and fair debate has been fulfilled. Beyond that, the endless repetition of the merits of the issue, or the reading into the record of recipes and poetry, provide no useful purpose in a democracy, save an undemocratic and tyrannical minority rule.

Mr. Chairman, the cause of democracy can be advanced in the Senate of the United States. It can be done by modifying the chief tool of a minority bent on obstruction.

The CIO-AFL urges this committee to report a modified rule XXII which will provide for cloture upon the affirmative vote of a simple majority of those present and voting, after a reasonable time for debate. Only in this way can true democracy be restored to the Senate. Only in this way can the Senate be made responsive to the will of the majority of the people.

Senator TALMADGE. Mr. Biemiller, we thank you very much for your appearance and your very fine statement.

I would like to ask you a question or two, if you do not mind.

Mr. BIEMILLER. Certainly, sir.

Senator TALMADGE. The previous witness, Mrs. Jenkins, quoted at length from a representative of labor about labor's objections when Vice President Dawes wanted to change rule XXII. At that time the position of labor was in favor of rule XXII as it then existed.

Now you have presented views opposed to it. When did the position of labor change on this issue?

Mr. BIEMILLER. Prior to merger, both the AFL and the CIO had a position against rule XXII. The CIO, to the best of my knowledge, practically from the beginning of that organization. The AFL position changed in the late forties or early fifties when it became apparent that rule XXII was the chief obstacle in the way of passing a meaningful civil-rights resolution.

Senator TALMADGE. They were in favor of the rule up to what date?

Mr. BIEMILLER. I will get you the exact date and send it to you, but my impression is it was the late forties.

Senator TALMADGE. I would like to have that information.

(The information subsequently supplied by Mr. Biemiller is as follows:)

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D. C., June 26, 1957.

HON. HERMAN E. TALMADGE,
Senate Office Building,
Washington, D. C.

DEAR SENATOR: During my appearance before the special subcommittee of the Committee on Rules and Administration on June 24, you requested additional information regarding the past position of the American Federation of Labor and of the Congress of Industrial Organizations on Senate rule XXII.

You will recall that at that time I quoted from a resolution adopted at the 1955 AFL-CIO merger convention, which said:

"Rule XXII should be changed to permit a majority of Senators present and voting to limit and close debate."

At the 1951 convention of the AFL, Resolution No. 7 was adopted unanimously, and included the following:

"Resolved, That this 70th convention of the American Federation of Labor, assembled in San Francisco, Calif., September 1951, go on record as endorsing legislation to amend the Senate rules of the Government of the United States to abolish the filibuster by providing for the invocation and application of the cloture rule to limit debate by a simple majority of Senators present that are necessary to proceed with the business of the Senate" (pps. 275 and 540, report of the 70th convention).

At the 1952 convention of the AFL, Resolution No. 8 was adopted unanimously, and included the following:

"Resolved, That the 71st Convention of the American Federation of Labor, assembled in New York City, N. Y., September, 1952, go on record as calling upon the 83d Congress to take action on its opening day in January 1953, to obtain adoption of the rules of the Senate that will permit a majority of Senators present and voting to limit and close debate so that the Senate may proceed to a vote

on any pending matter after there has been reasonable opportunity for full debate." (pps. 24 and 457, Report of Proceedings of 71st Convention).

At the 1953 convention of the A. F. of L., Resolution No. 71 was adopted unanimously, and included the following:

"Resolved, That the 72d convention of the American Federation of Labor assembled in St. Louis, Mo., call upon the Members of the United States Senate to eliminate the destructive power of the filibuster by restoring majority rule; and be it further

"Resolved, That in evaluating voting records and platforms of candidates for the office of United States Senator, careful consideration be given to the candidate's position on rule XXII."

At the same convention, Resolution No. 79 was also adopted unanimously, and included the following:

"Resolved, That this 72d Convention of the American Federation of Labor, assembled in St. Louis, Mo., September 1953, go on record as endorsing and supporting the movement to amend rule XXII of the Senate in order to limit debate by majority vote in the interests of the enactment of civil rights and other legislation" (pps. 422, 425, 608 and 653, Report of Proceedings of the 72d Convention).

At the 1950 convention of the CIO, a resolution was adopted which stated in part:

"We demand:

"1. The repeal of the Wherry amendment and support of amendments to permit the breaking of filibusters by a majority of those voting" (p. 203, Proceedings of the 12th Constitutional Convention).

At the 1951 convention of the CIO, Resolution No. 25 was adopted which stated in part:

"We demand:

"The repeal of Senate Rule 22—the notorious Wherry amendment that makes it possible for a minority not responsible to all of the American people, to veto by filibuster the enjoyment by the people of full civil rights, or, indeed, to halt at their whim the whole functioning of the Government" (p. 354, Proceedings of the 13th Constitutional Convention).

At the 1952 convention of the CIO, Resolution No. 23 was adopted which stated in part:

"Rule XXII purports to insure the proper closing of debate in the Senate. It does no such thing; it encourages and abets unlimited, aimless debate to prevent a vote from being taken. It is a rule enacted by ruthless men of both major parties, and it constitutes a singular form of violence against decisions of and by all the American people" (p. 282, Proceedings of the 14th Constitutional Convention).

At the 1953 convention of the CIO, Resolution No. 28 was adopted which stated in part:

*"We will continue to measure the faith and good intentions of Senators and Congressmen in both political parties in direct proportion to the support they give toward removing the procedural roadblocks in both Houses of Congress. As long as rule XXII in the Senate exists in its present form, it is an invitation for the opponents of extending human rights to filibuster endlessly * * * We urge the amendment of these rules in order that the majority decision of the American people can be heard" (p. 458, Proceedings of the 15th Constitutional Convention).*

At the 1954 convention of the CIO, Resolution No. 21 was adopted which repeated the language of the 1953 resolution. (See p. 384, Proceedings of the 16th Constitutional Convention.)

I hope this information will be of value to you in your consideration of proposed amendments to rule XXII.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

Senator TALMADGE. How many members do you represent?

Mr. BIEMILLER. 15 million.

Senator TALMADGE. 15 million.

How did they determine the policy of the 15 million on this issue about which you have testified?

Mr. BIEMILLER. The resolution which I read was adopted at the merger convention of the AFL-CIO which was held in New York City in December of 1955.

Senator TALMADGE. How many members attended that convention?

Mr. BIEMILLER. My offhand recollection is that there were roughly 2,000 delegates. The delegates represented all of the international unions which were affiliated with the AFL or the CIO.

Also represented were the city central bodies and the State federations of labor and the State and local industrial union councils of the old CIO.

Senator TALMADGE. The 2,000 delegates, then, determined the policy for the 15 million?

Mr. BIEMILLER. This is the normal procedure. These are resolutions which, as you well can understand, Senator, come up from the bottom. Many times they come from a State federation or city central body or international union.

Senator TALMADGE. Were the locals circularized or did they vote in any way?

Mr. BIEMILLER. The resolutions are available in advance, but it was the delegates in convention which voted on the policy.

Senator TALMADGE. No resolutions were sent the members?

Mr. BIEMILLER. No, sir.

Senator TALMADGE. You spoke about majority rule. Does not the Constitution of the United States, in many cases, operate to the very opposite of majority rule?

Mr. BIEMILLER. It guarantees minority rights which are protected by the Constitution; yes.

Senator TALMADGE. You would not be in favor of States having Senators according to their population rather than on the basis of two each, would you?

Mr. BIEMILLER. I recognize this is one feature of the Constitution that can only be amended by unanimous consent of the 48 States. Normal amendment procedures do not operate as far as the two Senators from each State are concerned.

Senator TALMADGE. Well, if you could do it, assuming that you could, would you favor changing the representative number of Senators representing the States?

Mr. BIEMILLER. The AFL-CIO has never taken any formal position, of which I am aware, on this subject, Senator.

Senator TALMADGE. Any questions, Senator Javits?

Senator JAVITS. Yes.

I would like to ask this question of you, if I may: The 96 Senators do not send a referendum to their constituents, do they, as far as you know, when they want to vote on something?

Mr. BIEMILLER. Not that I am aware of.

Senator JAVITS. And there are a lot fewer than 2,000, and they represent a lot more people.

Mr. BIEMILLER. That is correct.

Senator JAVITS. Have there been any resolutions adopted on rule 22 by the local bodies of the AFL, State or city?

Mr. BIEMILLER. There have been some! My offhand recollection is that the resolution which was finally adopted by the AFL before merger originally came out of a State federation of labor.

Most of our resolutions, as I stated a moment ago, normally come from some State or local body or from some international union. They

are not resolutions introduced by the Federation's officers. They come from some other source.

I might also add, as I have in answer to Senator Talmadge's question, that every resolution that the AFL-CIO merger convention passed was passed unanimously. There was no dissent to any resolution that was passed there.

Senator JAVITS. Another witness testified before you started, and I shall not detain you but a minute, Mr. Biemiller, about the question of denying any persons a job because of their color.

Do you have any facts or figures on that in the AFL that you could submit to us?

Mr. BIEMILLER. We would be very happy to submit to you some data on that subject.

Senator JAVITS. If you would submit it to me, I could then submit it to the Committee.

Mr. BIEMILLER. I would be very happy to, sir.

(The information referred to, subsequently supplied by Mr. Biemiller, is as follows:)

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D. C., July 15, 1957.

Hon. JACOB K. JAVITS,
Senate Office Building,
Washington, D. C.

DEAR SENATOR: During my testimony on Senate rule XXII before the subcommittee of the Senate Committee on Rules, you requested that I give you examples of denial of equal employment opportunities for Negroes.

The following examples relate both to the exclusion of Negroes from employment entirely, and to discrimination against Negroes after they have been employed in lesser jobs.

Until recently, separate seniority provisions which resulted in discrimination existed at the following plants:

Sinclair Refining Co., Houston, Tex.
Magnolia Petroleum Co., Beaumont, Tex.
Gulf Refining Co., Port Arthur, Tex.
Hayes Aircraft Corp., Birmingham, Ala.
Lockheed Aircraft Corp., Marietta, Ga.

Discriminatory practices, while they are more common in the South, are not restricted to one region. Complaints are on file relating to the following plants:

Fisher Body plant, division of General Motors Corp., Mansfield, Ohio
Fisher Body plant, division of General Motors Corp., Willow Springs, Ill.

These are, of course, but a tiny group as compared to the number of businesses where discrimination exists or has existed.

Rather than document each of these cases in detail, I will refer you to the President's Committee on Government Contracts, Jacob Seldenberg, Executive Director. This Committee, as you know, is charged with effectuating the policy of the President in eliminating discrimination by Government contractors.

Details on many of the cases listed above may be found in the Committee's files.

I hope this information will satisfy your needs. Please feel free to call upon us again if necessary.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

Senator JAVITS. Finally, I would just like to point out one detail: You referred to the Douglas resolution as permitting a simple majority.

Mr. BIEMILLER. I referred to a suggestion which Senator Douglas had made.

Senator JAVITS. Yes.

Mr. BIEMILLER. The resolution requires a constitutional majority, as I recall, and I believe this was an effort of Senator Douglas to meet the opposition half way, and being reasonable people, we recognize that sometimes compromises have to be made in these matters.

Senator JAVITS. But your organization recommended a simple majority?

Mr. BIEMILLER. A simple majority, both in resolution and in President Meany's and Secretary Schnitzler's statements to the Democratic and Republican National Conventions.

Senator JAVITS. I thank you, Mr. Chairman.

Senator TALMADGE. Thank you very much, Mr. Biemiller.

Mr. BIEMILLER. Thank you very much, Senator.

Senator TALMADGE. The next witness is Mr. Hancock, of the American Protective Committee of San Antonio, Tex.

STATEMENT OF AUSTIN F. HANCOCK, CHAIRMAN, AMERICAN HERITAGE PROTECTIVE COMMITTEE, SAN ANTONIO, TEX.

Mr. HANCOCK. American Heritage Protective Committee of San Antonio, Tex.

I want to say, as a prefix, the gentleman who just preceded me spoke of democracy many times. No such word as "democracy" can be found in our Constitution or Bill of Rights.

This is to the United States Senate Committee on Rules and Administration, by Austin F. Hancock, chairman, American Heritage Protective Committee of San Antonio, Tex.

The American Heritage Protective Committee of San Antonio, Tex., with its some 10,000 members, contributors, supporters—with hundreds of thousands cothinkers are pleased to accept and to appear before your Special United States Senate committee to endorse the aims and purposes of your committee and its principles to help safeguard our Constitution, States rights, Bill of Rights, civil rights, and our American heritage.

Senator JAVITS. Mr. Hancock, would you mind giving us the number of members and contributors separately?

Mr. HANCOCK. I haven't got them, but we have more members than we have contributors, contributors by our books. I will give you one before I leave.

Senator JAVITS. Could you give us the number of members and contributors? You say you have members and contributors.

Mr. HANCOCK. Contributors, about, between 6,000 and 7,000.

Senator JAVITS. And the rest, you say, are supporters?

Mr. HANCOCK. Supporters.

We are totally against limited debate in the United States Senate and House of Representatives. Also, we are forever against any public official, wherever located, who knowingly violates his or her oath of office to protect and to defend our United States Constitution, Bill of Rights and States rights, and our American heritage.

Every public official who knowingly violates his or her oath of office should be promptly and forever disbarred from again holding public office in all America and its possessions.

Our American Heritage Protective Committee was organized in the Menger Hotel, San Antonio, Tex., the night of May 25, 1950, with

some 500 real Americans present when various officers were nominated and elected, including certain members of our committee.

At that historical meeting our elected honorary chairman, a noted attorney and author of Chicago, Hon. Thomas Creigh, said, among other things, in praising the United States Constitution:

It is the greatest piece of work that has ever been struck off at one time by the hand of man.

Hon. Roy Sanderford, Belton, former Texas senator, opened his talk by declaring:

To preserve the noble heritage for which this organization fights, you cannot succeed without going to the very heart and into the very depths of politics. We must fight, politically and otherwise, against the appeasers, the Communists, the Reds, the fellow travelers, who are found in every rank of government and business—yes, even in some of our best pulpits; we must condemn these men who are daily being coddled and appeased by our Government leaders because they want their vote to keep them in office.

Senator TALMADGE. Thank you very much, Mr. Hancock.

Any further witnesses?

(No response.)

Senator TALMADGE. If there are no further witnesses, we stand adjourned until Tuesday, the 25th of June, that is tomorrow, at 10 a. m., when we will meet in room 155.

There is a further meeting scheduled for Friday, June 28, at 10 a. m.

(Whereupon, at 11:30 a. m., the subcommittee adjourned, to reconvene at 10 a. m., Tuesday, June 25, 1957.)

PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE

TUESDAY, JUNE 25, 1957

**UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.**

The subcommittee met, pursuant to recess, at 10:05 a. m., in room 457, Senate Office Building, Senator Herman E. Talmadge (chairman of the subcommittee) presiding.

Present: Senators Talmadge, and Javits.

Also present: Langdon West, special counsel to the subcommittee; Darrell St. Claire, professional staff member; Robert S. McCain, professional staff member; and Sidney Kelly, Jr., administrative assistant to Senator Javits.

Senator TALMADGE. The subcommittee will come to order.

We are delighted to have with us Senator John Stennis of Mississippi. Whenever you are ready, Senator, you may proceed.

STATEMENT OF HON. JOHN STENNIS, A UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Thank you.

Mr. Chairman and gentlemen of the committee, if I may say just a personal word, I think it is a very important assignment you gentlemen have as members of this committee. I was at one time honored by the Senate to be a member of the Rules Committee, and some of my most pleasant recollections are around that period when Senator Carl Hayden was chairman.

Mr. Chairman, if I may, I will proceed to read my statement here, then I have some additional points at the last that I want to make.

Mr. Chairman and members of the committee, I would like to commend your subcommittee for its wise decision to solicit the views of all interested persons, groups and organizations in connection with the pending measures for amendment of rule XXII of the Standing Rules of the Senate.

Full discussion of this measure should be brought forth in the light of developments which have occurred recently and the general awareness which appears to be apparent in all parts of the country that subtle changes are taking place in our form of government and way of life.

I feel that your committee could render no greater service than to give full consideration to all sides of this question, and feel that, unfortunately, those of us who have urged restraint in straitjacketing

the Senate have not had our point of view fully presented from all of the various patriotic and other civic-minded groups through the country whose devotion to constitutional government is unquestioned and unquestionable.

Under consideration by your committee are a number of measures designed to make the process of invoking cloture easier. I do not think that any of these pending measures should be adopted and embodied in our Senate rules as a substitute for the present rule XXII.

Mr. Chairman, the United States Senate is the only place in American Government where the States are represented as States.

Now, the phrase "States rights" is often used. I am thinking of this in terms of States powers. We are down to the last nub of representation of States as States.

The President represents the Nation as a whole, and his responsibilities are to the people. The executive branch, constituting the civil service, is not responsible to the States. Most of the officials in this branch are never elected, nor can the people bring about their removal except in accordance with impeachment laws or complicated administrative procedures for dismissal.

The Members of the House of Representatives, elected directly by the people from the beginning of our country's history, representing their districts which are geographical subdivisions of the States, are responsible to the voters or people of the subdivisions.

The Federal courts certainly do not represent the States, and the recent trend in the Supreme Court decisions has certainly shown disregard for the constitutional and historical respect for the integrity and sovereignty of the States.

It is only in the Senate that the States as such have representation. Their rights and powers are deposited in the Senate Chamber. It is their only forum in Government. It is the only place where their rights and powers, which were not delegated but were reserved under the 9th and 10th amendments, find their protectors.

If this be true, and it is true, then it must follow that the Senators elected from their States are the trustees of their States' rights and powers.

Members of the Senate had nothing to do with creating these rights and powers. That was accomplished when the Bill of Rights was adopted.

They have a responsibility, where legislation involves the creation of new Federal power, to see that their State's rights are protected.

They have a duty to support corrective legislation, where it is discovered that executive prerogative is being carried too far and is infringing upon the reserved rights of the States.

They have a duty to see that corrective legislation is supported and enacted to restore to States rights lost by judicial decree.

They have a duty to go forward in protecting the rights of States which have entrusted them with the power of a senatorial vote.

On the specific issues which come before the Senate, I feel that the question of support or opposition to any measure should depend not only on the individual member's opinions on the effect of this legislation at the national level, but should also reflect the searching of his conscience as to whether the power of the State he represents would be effectively diminished in derogation of the constitutional balance

and whether, in effect, he is violating the trust placed in him by the people of the State he represents by assenting to a loss of some incident of sovereignty of the State.

Now, if the Senate is just another legislative body with no concept beyond that, then rule XXII cannot be sustained. But, if it has any measure of the concepts that I have tried to outline here in the representation of the States, and that is unquestionably true, then there must be special rules to protect those powers and rights of the Senate; and in our form of government we are down now to where this is the last citadel of protection of those rights and powers.

Centralization of government is now the trend in national affairs, and is proceeding at breakneck speed. I think that the Senate is a brake on this serious change in our form of government, and I feel that its action as a restraining influence is a major part of its duty and purpose. I think that the Government must be kept close to and responsive to the people, and that the effectiveness of local and State government should not be further diminished by ill-considered and unwise legislation.

The question in my mind is: Is not a vote to make cloture easier a vote to diminish State power?—and it certainly is.

Let me examine the pertinent features of this rule and see what protection it offers the States in our Union.

In its present form rule XXII assures full and free debate of measures before the Senate. It does not guarantee unlimited debate, but by requiring a vote of 64 Senators—two-thirds of the Senators duly chosen and sworn—to close such debate, it places some limitation on unreasonable debate.

Admittedly, gathering the vote of 64 Senators to enforce a gag rule on any matter is a difficult undertaking. I feel that this is as it should be—Senators should not be silenced by hasty and ill-considered action.

This rule, and the underlying principle of full and free discussion of major national issues, more than any other single thing determines the power of the States in their representation in the Senate. As much as any other single thing, the principle of free discussion without the threat of a gag rule determines the nature of the Senate and contributes to its stability.

Now, there is your Senate as an institution.

If this rule were eliminated and cloture were made possible by a mere majority vote of the Senate, the deliberative function of the Senate would be destroyed. It would be a mere annex of the House of Representatives, and would be merely another legislative body.

Rule XXII is a meeting place, or a middle ground, between absolute majority rule and the dignified representation of the sovereign States in their National Government.

If this appears to be a compromise on principle, perhaps we should stop and examine the nature of government and the protection it affords.

Minorities have rights which no majority, however large, should ever be permitted to override. Many personal rights are conferred by the Constitution, yet an individual is 1 person—there is a majority of 170 million. Government is established to protect the rights of the minority down to the individual citizen or person. There is justifica-

tion for any lawful obstruction to the enactment of measures which would trample and override these rights.

On the other hand, there perhaps should be some limit to debate in the Senate. While the liberal forces appeared in opposition to the vote of two-thirds of the Senators duly chosen and sworn—insisting instead that cloture might be invoked by majority vote or two-thirds of those present and voting—I nevertheless believe that the practical requirement of 64 affirmative votes on a cloture motion raises the dignity of representation of the sovereign States in the Senate.

When the Senate was first organized in 1789, a rule limiting debate was adopted. It was almost never used, and the Senate discarded it in 1806.

It was not readopted in any form until 1917 when a filibuster delayed arming of American merchant ships prior to our entry in World War I. It was this wartime emergency which imposed the first limitation in 111 years on deliberations in the Senate. The cloture amendment to rule XXII was never used during World War I. Cloture has been invoked only 4 times out of the 19 times it was sought to be invoked.

As a part of the history of the passage of that rule in 1917, the committee will doubtless remember that within a few days after that debate, President Wilson went on and armed the ships anyway.

Now, as a war measure, he went on and armed the ships anyway, and was upheld in that right.

Now, this rule protects minorities. By making a gag rule depend on more than a mere majority vote, it gives Senators in a minority position on a given matter the opportunity to present their views to numerically superior forces and provides the time for public reaction to make itself felt in determining the issue under consideration. It gives time to sound the alarm against ill-considered legislation.

A majority vote in the United States Senate does not necessarily represent a majority of the States, nor of the people. Senators vote as individuals according to their own convictions, and necessary absences on important matters have sometime turned the tide in a close vote.

Public opinion all too often, upon an important legislative question, may never be formulated or effectively expressed. Bills are often called up on relatively short notice, and the Congress has been known to act without the full awareness of the public generally on the important measures it is considering.

Prolonged debate, however, has in the past, and may in the future, prevent hasty majority action which is actually contrary to the will of the people. Further, the Senate has a special duty both with proposed legislation and so far as the President is concerned. These duties are imposed by the Constitution.

On revenue bills, the House of Representatives must act first and the Senate acts in a kind of appellate capacity. It has a special duty to inspect proposed legislation carefully. This duty cannot be effectively performed without freedom of debate. Such legislation can be gaveled through the House of Representatives with terrifying speed under special rules framed by a partisan committee and with only the barest skeleton of debate.

It is essential that there be one place in government for thorough deliberation and public discussion of the issues.

I have a very profound respect for the House of Representatives, representing directly, as they do, the people. But on a very, very important piece of major legislation pending before the Congress 2 years ago now, I went over to the House to hear the debate. One of the very able members of the Mississippi delegation—this was a major bill affecting every county in his district.

He had 5 minutes to discuss the merits of that bill in debate; and, with all deference to the House, they never did get the House in order before his 5 minutes were up.

That was his day in court—that 5 minutes. I think he got 3 minutes of that as a matter of right, and someone else who wasn't going to use the time gave him 2 additional minutes.

Then that bill came on over to the Senate, and it was debated for 3 weeks, and wound up a far more acceptable bill, not only to my area of the country, but, as time has proven, far better for the entire Nation. It is one of those practical illustrations of the contrast between the rules.

So far as I have been able to determine, filibustering does not prevent needed legislation. I do not recall a single instance in American history where an important measure defeated by a filibuster has been enacted later. Nearly every proposal thus rejected has died unregretted by the country. No really meritorious measure has been defeated by filibuster, but some vicious proposals have been killed.

Rule XXII has been used in the past by almost all minority groups, as well as by almost all the liberal forces in Government.

Its protection has been sought not only by southern Democrats but also by the progressive Republicans, such as the late Senator La Follette of Wisconsin and Senator Borah of Idaho.

One of the impressive things, when I first came here after the day of those gentlemen named, was the very striking reports that were given by other Senators as to how these two men, the late Senators La Follette, Sr., and Senator Borah, used to take the lead in defending these very same Senate rule provisions.

Two examples of legislative measures which were highly popular in the excitement of the times and which were defeated in the Senate because the Members of the Senate and the people of the country had an opportunity to take a second look at the matters:

In 1937, when President Roosevelt was seeking to pack the then respected Supreme Court, his popularity would have assured this objective had the matter been brought to an early vote.

The strategy of delay was decided upon, and after a few months, a majority of the Senate came to the conclusion that most of them hold today—that the Supreme Court should be an independent body of respected jurists, not loaded with political appointees.

Later, during the railroad strike of 1946, it was recommended that striking employees be drafted into military service. This bill passed the House of Representatives within minutes after the recommendation had been made. In the Senate, however, the more thorough and detached consideration of this measure led to its being killed as unwise.

There have been cases when prolonged debate has been the major factor in the passage of bills. Recent examples of this were the Lend-Lease Act of 1941 and the loan to Great Britain in 1946, both of which

had doubtful support when the debate was begun but later gained a substantial majority.

Thus, almost every minority group in the country has benefited because of this principle in conducting the Senate's business. And I believe the country as a whole has also benefited.

The record of the longest continuous debate is held by the senior Senator from Oregon when he was supporting the liberal view on the tidelands bills. His views did not prevail, but he was not subjected to any arbitrary gag rule during the 22 hours and 23 minutes of his speech.

From this brief résumé of the principle and the rule as it now stands, we can see that free debate has best served those who would now destroy it, even though none can tell who may be the next to invoke its protection.

They would destroy this rule and the principle it sustains because this manner of procedure has become beclouded by the civil rights issue—a legislative matter.

And, gentlemen of the committee, that is 99 percent of the cause of the pressure and the agitation to destroy this mudsill, this bedrock of the Senate.

Rule XXII, as a procedural rule, is more important than the passage of any single bill. It is more important than passage of the pending civil rights bills by those who favor them.

It would be hard to think of a more effective method of cutting down the States rights and powers than by putting the straitjacket of a gag rule on their Senators.

Now, I don't call myself an experienced Senator, but the members of this committee who are here this morning at this meeting, even though highly experienced in all phases of government affairs, haven't been in the Senate very long, and I tell you right now, gentlemen, you can't push a Member of the Senate around under the present rules of the Senate. It is not like being Governor of a State, but you can't push Senators around.

If we destroy these, the bedrock of these rules of the Senate, we will soon find that we ourselves are just another single member of a legislative body, and that our States, as such, are not going to get any consideration—not any—as States.

Each State should have a voice in national affairs. Through its Senators the voice of the State is heard, and when the senatorial voices are forcibly silenced, that State is silenced. The people of that State have lost their representation, their opportunity to be heard, their right to have their views considered by the Nation, their privilege of gaining the general support of public opinion.

The clamor for civil rights legislation is confusing the procedures of the Senate, and the nature of the States' representation on the Senate floor.

We will regret the day when we let any issue confuse the procedures on the Senate floor, and the nature of the State's representation there.

The substance of these bills and the nature of the Senate as an institution of government are unrelated, but the hysteria surrounding these evil bills is causing a fatal lack of perspective in the minds of too many people.

Fundamental civil rights will be lost if these measures are enacted. The very basic concepts of our Government and system of law will be trampled if the catastrophe of passage should fall on us.

And let me point out, so far as the civil-rights bill is concerned, even at this session one house has already passed the bill, and the other house, by an affirmative vote, has placed it on its calendar, where now it has a chance to be passed, which is proof of the point that it is not necessary even for those bills—

Senator TALMADGE. Senator, will you yield at this point?

Senator STENNIS. Yes; I will be glad to.

Senator TALMADGE. As you stated a moment ago, both my colleague from New York and I are new members of the Senate. Getting down then to the fundamental question of passing a bill by discharging a committee, what is required to accomplish that?

Senator STENNIS. Just a simple majority of the vote.

Senator TALMADGE. It could easily have been accomplished by means of a discharge petition, could it not?

Senator STENNIS. Oh, yes, sir; with votes to spare.

Senator JAVITS. Would the Senator yield at this point? Would a motion to discharge a committee have been debatable until stopped by cloture under rule XXII?

Senator STENNIS. As I understand the rules, it would have; yes. It would have been a motion like a motion to take up a bill and would have been subject to debate. It would have to run that gantlet.

Senator TALMADGE. Any legislation is subject to that.

Senator STENNIS. Oh, yes. I inquired during that debate just what the rule was about discharging a committee, and really I found it to be very liberal, very liberal; and I think that course is better. It shows more respect for the committee system, but the other course was adopted by the Senate, and that is history now.

We start from there, but both illustrate how the Senate can act against the strongest kind of opposition.

But, equally bad is the smearing and defamation of the noble and fine principles sustained by rule XXII—the friend of all minorities—which has served us so well.

Now, that concludes my written remarks, gentlemen of the committee, but I want to assure you, as a fellow Member of the Senate, and one who carries the same responsibilities that you carry, that I am thinking of this, the welfare—I am thinking of it in regards to problems in our area of the country, of course, but I am thinking of it, too, in terms of the problem of the Nation as a whole, the country at large, and I am thinking of it particularly in view of what is the Senate, after all?

The Senate is an institution. A man who has been honored by his State to be Governor, a man who has been honored to be the attorney general, who have already felt keenly the responsibilities of those offices.

And I know you feel as much as I do the keen responsibilities we bear here as representatives of our States in this national legislative body that is doing so much to set the policies, not for our own country, but for the world.

Now, I don't know who would be the first victim of the change of this rule, but I am certain that there will be many victims. I am

certain, in my mind, that labor will be within a few years the victim of the change of this rule.

I am certain that business as a whole will see the day when it will be the victim of the rule. There will be areas of the country—my area will be a victim of the rule. There will be other areas.

When we tear down the last bulwark of strength of the States as such, as States, in the most powerful legislative body in the world, we are really wiping out the State lines, and that is particularly true of the so-called smaller States, and with all deference to anyone who comes here vested with certain power to represent any State or particularly a smaller State, I don't see how he can reach the conclusion that it is his duty to surrender part of that power.

I know, as for myself, without any criticism of anyone else, I feel that when I was given the certificate of election, or the commission, as a Senator from my State, that State entrusted to me certain powers that belong to it under the law, and, so far as I am concerned, I am not going to surrender, consciously surrender, any of those powers.

I want to give that commission back to the State with the full-fledged power and prerogatives it had when given to me. I want to return my State's powers intact.

Now, may I read just very briefly here from William S. White's book—I ran across these paragraphs last night, and think they ought to be in the record.

I am reading from page 65 of William S. White's book, *The Citadel*.

Senator JAVRS. I do find myself in agreement with one point the Senator makes, and that is that I feel that those who are opposed to rule XXII are very much on trial in connection with this bill that is on the calendar.

If it is filibustered, I believe there is an excellent chance that rule XXII will be amended.

On the other hand, if wisdom triumphs over other views, and that bill is allowed to go its legislative course, I wouldn't know.

Thank you.

Senator STENNIS. Thank you, Senator.

Quoting now, if I may, briefly:

It is for the present perhaps enough to say only that not in all the great storms that have beset this Republic, not in the First World War, not in the depression, not in the Second World War, not in the transient ascendancies of any and every White House, has the Senate as a whole ever really given ground upon the issue of its rules.

Look at them as good, or look at them as bad; the outstanding fact is that they remain, deeply unpopular though at times they may be, when previously they were to some extent once abridged and breached, the body of the institution was like a man with one leg.

When the southerners returned from the War Between the States, the full operation of the old way was restored, and 36 years before the rules had made the Senate a shelter to Woodrow Wilson's "little group of willful men," he himself had written in 1881 of these same rules, "the Senate's opportunities for opening unrestricted discussion, and its simple comparably unencumbered forms of procedure unquestionably enable it to fulfill with very considerable success its high functions of revision."

Gentlemen of the committee, I am glad to rest my cause in your considerate and deliberate hands.

Senator JAVITS. Senator Stennis, no one can fail to admire their authority and eloquence. I have heard them on the floor, and certainly this is a very typical example of sincerity and his conviction.

Senator STENNIS. Thank you, sir.

Senator JAVITS. I would like to ask the Senator—and I know the Senator will forgive me, if any question sounds too probing, because we are both men trying to get at some truth—I would like—I will not detain the Senator—

Senator STENNIS. That is all right. Whatever time you want. If necessary, I will come back.

Senator JAVITS. No, no. It won't be necessary at all.

The Senator is opposed, of course, to this civil-rights bill on the calendar?

Senator STENNIS. That is correct; yes.

Senator JAVITS. And the Senator has very deep convictions about it, as being very unwise in terms of legislation. Am I correct?

Senator STENNIS. Well, yes. The purposes to be accomplished are being accomplished. So much more certainly and more quickly otherwise than by legislation.

Senator JAVITS. Now, the Senator spoke of gag rule. I served in the House of Representatives, and what we defined as a gag rule there was a rule which prevented amendment to a bill. Debate is always limited in the House. We did not consider a gag rule to be a rule which limited debate.

It always is limited.

Now, does that change the Senator's use of that term at all?

Senator STENNIS. Well, the word "gag" there is a slang expression. At greater length the thought could have been expressed differently. I know you have very valuable debate, very valuable debates in the House, and I appreciate very greatly the House.

But, at the same time, its opportunity to really deliberately consider legislation there, it virtually has no opportunity to arouse the membership or the people one way or the other, as I see it.

Senator JAVITS. Now, the Senator, of course, knows—

Senator STENNIS. Pardon me. Of course, the big distinction is that the Senators are to represent their States, and not the districts.

Senator JAVITS. I will come to that. I will try to be very brief.

The Senator, of course, is aware of the fact that the measures before us, the most liberal of the measures before us—Senate Resolution 17—would give about 3 weeks of debate or more before cloture could be applied by a constitutional majority, not a simple majority.

Senator STENNIS. That is right.

Senator JAVITS. I am sure the Senator understands that.

Now, the Senator made one statement which I would like to ask him about. He said that bills filibustered have generally died because they have been unsound, anyway.

I call to the Senator's attention that we have in the record a study by the Library of Congress, to which I would invite the Senator's attention (see appendix, p. 291), which shows there were 33 bills filibustered since 1865, and that among all of these bills, practically all of them have passed in one form or another. The only five bills, according to the study, upon which nothing has happened, which have really been killed, are the civil rights bills, FEPC in 1946 and 1950,

antipoll tax in 1942, 1944, 1946 and 1948, and the so-called antilynching bills in 1922, 1935 and 1937.

Other than that, the only bills which have failed to pass were the so-called force bills in 1890, and the so-called armed ships bill, which the Senator has himself referred to, in 1917.

But, as against those two instances, you have many instances of civil rights bills which have failed because of the filibuster and never been passed; and I would say that I think that bears out the statement that it is the civil rights bills where the mortality has occurred, because of the filibuster, rather than other bills.

The Senator said, however, something else, and I just invite the Senator's attention to that study.

Senator STENNIS. Yes. Well, I am familiar with that study as it existed a few years ago. I haven't looked at it since it was perhaps brought up to date.

But my point is, under this rule in the Senate, these movements or measures or reforms, or whatever you call them, their defeat under the rules of the Senate has not hurt any one, and under the rules of the Senate, they finally found their way into the policy of the law under the hardships, if you want to put it that way, or the rules of the Senate, if they had a continuing merit.

On the other hand, if any measures haven't been able to, it is the strongest possible evidence in my mind that they didn't have the sustaining merit to accomplish the ends in that way.

Senator JAVITS. Senator, I have just two other questions. I don't want to detain the Senator. We will have lots of time to debate that.

The Senator said—the Senator will correct me if my quoting is inaccurate—that minorities have rights which no majority should be permitted to override. Now, does the Senator feel that the right to be immune from civil rights legislation is one of those rights enjoyed by the people of his State; in other words, a right which no majority should be permitted to override?

Senator STENNIS. Well, I was referring there to certain individual rights. There are certain rights that cannot be taken away from an individual because they are so indelibly written into the Constitution.

On the broad question of civil rights, it is largely a question of methods, Senator Javits. We disagree at opposite ends of the poles on methods, but the general achievement and accomplishment over the years, I expect we are pretty much together after all.

Federal legislation will hurt and hinder there, rather than help.

Senator JAVITS. But the Senator does not contend that the Congress would not have a right to pass Federal legislation on the civil rights issue.

Senator STENNIS. Well, if passed within the constitutional framework and under the rules, of course, many of those bills are the proper subject of legislation, yes. I have never contended to the contrary.

I think really the FEPC bill—that is one I made a study of when I first came here—was wholly unconstitutional. I did think the so-called antipoll tax was, because it is so clear in my mind, at least, that legislation, statutory legislation, cannot reach that problem.

But, of course, constitutional amendments as submitted would be entirely in order.

Senator JAVITS. Well, is there any one of these civil rights bills the Senator would say the Congress could constitutionally pass?

Senator STENNIS. Well, I am familiar with all the old bills. On the poll tax, of course, that is one—I think that is directly in line.

I mentioned the FEPC and the antipoll tax by legislation. This bill now, the so-called Brownell bill, attempting to override and overrule and take away all discretion of the local authorities on a number of those matters, I don't see how it could be constitutionally upheld in my concept of the Constitution.

But, of course, the Court's interpretation of the Constitution is considerably different now from what I believe. My constitutional knowledge has been repealed. All of it has been overruled. Most of it has been overruled since I was in law school, or since I practiced law.

Senator JAVRS. Well, the Senator doesn't feel that there is any civil rights bill that we could pass that would be constitutional?

Senator STENNIS. No. I didn't say that at all.

Senator JAVRS. I am trying hard to find out——

Senator STENNIS. I would be glad to furnish the Senator a list of what you have, these bills here, and after a little study, give you my opinion on all of them. I have given it on some of them already.

Senator JAVRS. Just one last question. Does it seem to the Senator that the real right of the Senate is in the way the votes are divided? For example, the Senator has what—2 million or 3 million population?

Senator STENNIS. Yes. Two million and two.

Senator JAVRS. And my State has 17 million.

Senator STENNIS. A little over 2 million.

Senator JAVRS. Nevertheless, we also have two votes.

Now, isn't that the real safeguard of the States, rather than the filibuster?

Senator STENNIS. Well, that just points out and proves conclusively that the representation is by States, and, if you are going to wipe that out now and just say in all matters the majority can do this or do that, you just wipe out all the State lines, as I feel it.

Senator JAVRS. The Senator doesn't feel, therefore, that the protection to the States is in the way the voting is set up. That is, you have two votes for a million-plus people. I have 2 votes for 17 million.

Senator STENNIS. The beginning of that protection is through the State's representation in the Senate, but, if they come in and change the rules and wipe it out, they have surrendered part of their powers.

Senator JAVRS. And the Senator feels that the filibuster, therefore, is an essential States right?

Senator STENNIS. Oh, I certainly didn't say that. I said that the State's ability to exercise the power that it has depends on the present Senate rules as virtually the last citadel of real State representation. If you take that out, you are just another Member of the legislative body.

Senator JAVRS. Well, I don't want to delay you further.

Senator STENNIS. Thank you. There is a conference committee going on in Appropriations that I don't want to miss.

Senator TALMADGE. If the Senator could stay about 30 more seconds, I think I can complete a couple of questions I would like to ask.

Wasn't an effort made during the War Between the States to suspend the writ of habeas corpus?

Senator STENNIS. Well, it was suspended in actuality, as I recall.

Senator TALMADGE. Was it not defeated, actually, by prolonged discussion in the United States Senate?

Senator STENNIS. Yes.

Senator TALMADGE. And, if these rules had served no other purpose, would it not have been a desirable result?

Senator STENNIS. A wonderful illustration right there. I understand, as a practical matter, it was suspended for a while, but never legally.

Senator TALMADGE. Thank you. We appreciate your coming here.

I have statements from Senators Langer and Kuchel to insert in the record at this point.

Are there any others?

(The statements referred to are as follows:)

STATEMENT OF HON. WILLIAM LANGER, A UNITED STATES SENATOR FROM THE
STATE OF NORTH DAKOTA

It is a distinct privilege to present to the special subcommittee of the Committee on Rules and Administration this prepared statement expressing my views on whether rule XXII of the Standing Rules of the Senate pertaining to limitation of debate should be amended or not.

Gentlemen, I have been on record for many, many years concerning the rules of the Senate and the entire matter of cloture. I must state that, without exception, I have not changed my views. On March 11, 1949, I rose on the floor of the Senate. I followed the distinguished Senator from Wisconsin, Robert M. La Follette, when he stated at that time that the only remedy the minority had in matters of this kind was unlimited debate. I agreed with that principle, I still agree with that principle, and I shall vote not to amend the rules.

So that there won't be any possible question as to my stand over the years on the subject of unlimited debate, I shall refer to my speech on March 11, 1949, on the floor of the Senate as it was reported in the Congressional Record. This speech, which includes references to unlimited debate by some of the greatest leaders in the Senate in years past and also colloquies between several Senators and myself, is as follows:

[Reprinted in the Congressional Record of January 4, 1957, p. 1401]

Mr. LANGER. Mr. President, very briefly I want to state my position on this motion. In the 80th Congress I led the fight to have the Republican Party carry out its pledges. The Republican Party at that time did not do so. On June 7, 1948, I brought to the attention of the Senate that in the Republican platform of 1944 the Republicans had placed the following planks. First:

"We pledge the establishment by Federal legislation of a permanent Fair Employment Practice Commission."

Second:

"ANTI POLL TAX

"The payment of any poll tax should not be a condition of voting in Federal elections, and we favor immediate submission of a constitutional amendment for its abolition."

Third:

"ANTI LYNCHING

"We favor legislation against lynching and pledge our sincere efforts in behalf of its early enactment."

And, Mr. President, fourth:

"INDIANS

"We pledge an immediate, just, and final settlement of all Indian claims between the Government and the Indian citizenship of the Nation. We will take politics out of the administration of Indian affairs."

Mr. President, day after day I stood upon this floor, when the Republicans had a majority, begging them to carry out the solemn promises, the definite pledges they had made to the people of the United States, and it is significant to note

that I got exactly 7 votes on 3 of the measures, and that only 1 of them was passed.

Mr. President, if I were assured that after this appeal had been decided my colleagues on the other side would make a sincere effort to carry out the wishes of President Truman. I would not take the few minutes I am taking. I have a definite idea as to their intentions. I wish to make perfectly clear the reason why I shall vote to overrule the decision of the Vice President yesterday afternoon.

In the first place, North Dakota holds a rather peculiar distinction. At the time rule XXII was adopted, that grand and popular Viking, the late Senator Gronna, of North Dakota, was 1 of 3 Senators to vote against it. Also at that time there was in the Senate a man who was beloved all over the country and particularly by the people of North Dakota. I refer to the late Senator Robert La Follette, Sr., one of the fighting champions—and one of the greatest—in behalf of the common people. Mr. La Follette was elected to the Senate in 1905. Because he had a lieutenant governor who disagreed with him politically he waited until 1906 before he came to the Senate. In 1917, 11 long years after Mr. La Follette first became a Member of this body, the question of cloture came up.

Mr. President, I believe that no other question which has arisen in the Senate during the 8 years I have been a Member has resulted in my receiving more telegrams and more telephone calls than I have received in this case, after announcing a few days ago that I would vote not to sustain the anticipated ruling of the Vice President.

In order that my position may be very clear, I wish to say that I fully agree with the late Robert La Follette, Sr. On March 8, 1917, in speaking of rule XXII, just before the vote took place, Mr. La Follette said:

"With a rule such as is here proposed in force at that time, with an iron hand laid upon this body from outside, with a Congress that in 3 years has reduced itself to little more than a rubber stamp, let me ask you, Mr. President, if you do not think a rule of this sort would be bound to be pretty effective cloture? Especially is that true as some of the proposed legislation was of a character that appealed to certain Senators upon this side of the Chamber who, coming from States where the manufacture of munitions is a mighty important industry, are impressed with legislation that benefits the interests they represent?"

Mr. La Follette continued—and I invite this to the attention of every man who pretends to be a progressive. Everyone who has studied history knows that Rome, after 450 fine years, fell when Julius Caesar made himself a dictator and when he subjugated the Roman Senate to his will. The English Parliament was strong for many hundred years, until Gladstone succeeded in abolishing the right of free discussion, at the time when the matter of freedom for Ireland came up for debate in Parliament.

I read at this time what Senator La Follette said when a proposal for cloture was before the Senate 32 years ago:

"Mr. President, believing that I stand for democracy, for the liberties of the people of this country, for the perpetuation of our free institutions, I shall stand while I am a Member of this body against any cloture that denies free and unlimited debate. Sir, the moment that the majority imposes the restriction contained in the pending rule upon this body, that moment you will have dealt a blow to liberty, you will have broken down one of the greatest weapons against wrong and oppression that the Members of this body possess. This Senate is the only place in our system where, no matter what may be the organized power behind any measure to rush its consideration and to compel its adoption, there is a chance to be heard, where there is opportunity to speak at length, and where, if need be, under the Constitution of our country and the rules as they stand today, the constitutional right is reposed in a Member of this body to halt a Congress or a session on a piece of legislation which may undermine the liberties of the people and be in violation of the Constitution which Senators have sworn to support. When you take that power away from the Members of this body, you let loose in a democracy forces that in the end will be heard elsewhere, if not here."

I have not time to quote all of Mr. La Follette's speech. He gave one or two quotations. Here is one from a former Senator from Indiana, Senator Turpie, who, some 50 years previously, had made a statement in regard to limitation of debate. This is what Senator Turpie said:

"I heard this body characterized the other day as a voting body. I disclaim that epithet very distinctly. I have heard it described elsewhere as a debating body. I disclaim that with equal disfavor. This body is best determined by its

principal characteristics. The universal law and genius of language have given a name to this body derived from its principal attribute. It is a deliberative body—the greatest deliberative body in the world.”

That was the first time, so far as I have been able to ascertain, that that description of the United States Senate was given. He continued:

“Now, voting is an incident to deliberation, and debate is an incident to deliberation; but when a body is chiefly characterized as deliberative there is much deliberation apart from discussion and debate, and wholly apart from what is called the business of voting.

“The essence and the spirit of a body like ours, now over a century old, may be best gathered from its rules of action, the body of law governing it always very small, now very brief. Of the 21 rules properly affecting parliamentary procedure in this body 11 relate to the subject of deliberation. More than one-half relate exclusively to that subject and have nothing to do with debate or voting. I suppose that the form of law under which the will of the majority must control this body embraces at least the rules which govern us. Here is rule XXII, one which touches us every day. I think it is the most frequently operative of any rule in the Senate.”

Mr. President, after referring to the pledges made by the Republican Party, which they did not keep, I now call attention to the Democratic Party—whose members now say that they stand for civil rights. Mr. Truman was a member of this body for 5 years. What does the cold record show as to what he did for civil rights? Did he lead any fight for them in this body, Mr. President? I was here during those 5 years. He did not lead one fight for them. Where is he today? He is not in Washington. Mr. President, he is out fishing, in Florida. That shows his great interest in this matter.

Oh Mr. President, these Negro votes are very fine on election day. Apparently the Democrats think they have to make a showing for civil rights this year and perhaps next year and perhaps the year after that—but not a serious effort to get these civil-rights measures enacted; and the effort here these past 10 days has not been serious.

Mr. PEPPER. Mr. President, will the Senator yield for a question?

Mr. LANGER. I refuse to yield at this time; I thank the Senator.

The PRESIDING OFFICER. The Senator from North Dakota declines to yield.

Mr. LANGER. Mr. President, the effort has not been serious. I imagine the Senator from Florida might give us some of Mr. Truman's votes on various measures. I think that he voted right when it came time to vote; but at no time did he lead a fight for civil rights.

Mr. President, what a difference. When 2 or 3 times at the last session I tried to prevent the passage of a bill which, under selective service, would draft the last remaining son of a family whose two other sons had been killed in the service, the Members of the Senate stayed here and had 2 sessions all night long—2 long, long night sessions. But I have not seen any so far this session, Mr. President. So far in this session we have worked no later than 8 or 9 or 10 o'clock at night, and then we have quit until the next day at noon, not 11 o'clock. I, for one, want to make it very plain that at any time that the Democrats really want to pass these civil-rights measures, I am prepared to stay here all night or stay here a week or a month in order to enact the civil-rights program that Harry Truman has advocated since he has become President.

Not long ago the distinguished Senator from New York [Mr. Ives] said he thought he was perhaps as good a friend of civil rights as was any other Senator upon this floor. I think he is correct. I wish to say that during the 8 years I have been here, I have voted for every bill, without exception, calling for the establishment of civil rights in this country. So today I wish to make it very plain that when I vote to override the decision of the Vice President I am still a firm, fighting friend of civil rights—just as strong a friend of civil rights as I ever was; and if the Democrats will begin tomorrow or Monday with a really serious, honest effort to carry out Mr. Truman's civil-rights program, I assure my friend the distinguished majority leader [Mr. Lucas] that he will find me voting with him every single time. I hope the Democratic Party will do that. I hope they begin on it right away, and never quit until they secure the enactment of that civil-rights program. I think they will receive a great deal of support from Senators on this side of the aisle.

Mr. President, apropos of the telegrams and telephone calls on this matter which have been received by Senators—and two of those communications are rather threatening, especially one from New York—I wish to say that it seems to me that the people who sent those messages do not really understand the prob-

lem we face here, which was so clearly set forth today by the distinguished senior Senator from Michigan [Mr. Vandenberg].

Mr. President, in closing let me say that when I came to the Senate I had no better friend than Senator Charles McNary, of Oregon, who at that time occupied the desk next to the one I now have in this Chamber. He was then the minority leader. I shall never forget when he said to me that, in his judgment, one of the greatest safeguards of democracy was the fact that the right of unlimited debate exists in this Chamber, and I remember very well that when a distinguished Senator came to me and asked me to sign a cloture petition I talked with the senior Senator from Texas [Mr. Connally], and I also secured the advice of Senator McNary, of Oregon, and I did not sign it. Certainly when a Member of the Senate like Senator La Follette, who was here 11 years, or a Member of the Senate like Senator McNary, gave me such advice, I did not sign it. I took the advice of the distinguished Senator Charles McNary, of Oregon.

Mr. CONNALLY. Mr. President, will the Senator yield for a question?

Mr. LANGER. I yield.

Mr. CONNALLY. I wish the Senator to be correct in his statement. I am sure he did not mean to say that I asked him to sign the cloture petition, for I was against signing it.

Mr. LANGER. That is correct; the Senator from Texas was against signing it. When such a petition was brought to me and I was asked to sign it, the distinguished Senator McNary, of Oregon, joined the Senator from Texas in saying that the right of free and unlimited debate in the Senate was one of the finest things about this body.

Mr. President, again I wish to assure my friend the Senator from Illinois [Mr. Lucas], the majority leader, that if he will bring up this question of civil rights he will find no better backer than myself, and I shall be one of those who will hold up his right arm in carrying on that fight.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. LANGER. I yield.

Mr. LUCAS. Do I correctly understand that the Senator from North Dakota is in favor of the Wherry-Hayden resolution?

Mr. LANGER. I am not certain; that is a question we shall take up after this one. So far as the question of invoking cloture by a two-thirds vote is concerned, I am not quite sure whether I favor it or am opposed to it. I may even be opposed to it. I know that I do not favor cloture by majority vote, under any consideration.

Mr. LUCAS. In any event, the Senator from North Dakota is in favor of free and unlimited debate, and he has been in favor of it all the time, I understand.

Mr. LANGER. That is correct.

Mr. LUCAS. If the Senator does not favor the Wherry-Hayden resolution, why would he wish to keep us here for a month?

Mr. LANGER. I may be in favor of that resolution; I have not stated that I am opposed to it. I wish to study it and go over it. I do not wish to commit myself regarding it until I look it over and study it and hear the debate on it. I may even wish to offer an amendment to it.

Mr. LUCAS. Mr. President, will the Senator yield further?

Mr. LANGER. I yield.

Mr. LUCAS. The Senator has been talking about breaking this filibuster, but he is in favor of free and unlimited debate. I do not quite follow his reasoning, if he is in favor of having the Senate stay here for a month and if he is in favor of free and unlimited debate.

Mr. LANGER. It is very simple. If the Senator needs help, I shall be glad to give it.

Mr. LUCAS. I shall need a great deal of help.

Mr. LANGER. All the Senator from Illinois has to do is keep the Senate in continuous session. If that is done, it will not be very long, as the Senator from Michigan said today, before we shall arrive at some understanding or agreement which will be mutually satisfactory.

Mr. LUCAS. Mr. President, will the Senator yield further?

Mr. LANGER. I yield.

Mr. LUCAS. What the Senator says may be correct; but I am not sure that I shall be able to depend on the Senator from North Dakota, when we finally attempt to break the filibuster, to help us to break it, because he may not be in favor of the Hayden-Wherry resolution. I hope I can depend on the Senator from North Dakota when the time comes for him to go along with us.

Mr. LANGER. I assure the Senator from Illinois that I shall go along in helping secure the enactment of the Truman civil-rights program.

Mr. LUCAS. But the Senator from North Dakota makes some qualifications in that respect.

Mr. LANGER. No; I make no qualifications. When the Senator from Illinois asks me whether I favor a resolution which I have not yet had ample opportunity to study, I say that I am not sure whether I shall favor it without the crossing a "t" or the dotting of an "i."

Mr. MAYBANK. Mr. President, will the Senator yield?

Mr. LANGER. I yield.

Mr. MAYBANK. The Senator from North Dakota has mentioned the name of the great Senator Bob La Follette. I wish to ask the Senator a question, because we were here together with another great Senator from the West, Senator Wheeler. I am sure the Senator from North Dakota well remembers the debates on the floor of the Senate with that distinguished Senator from Montana. I wish to remind the Senator that many a time Senator Wheeler—

Mr. LANGER. Senator Wheeler stood first, last, and all the time for free and unlimited debate upon this floor.

Mr. MAYBANK. Also, as I remember, he was a candidate, along with the distinguished Senator Bob La Follette, of the liberal movement in America.

Mr. LANGER. That is right.

Mr. KNOWLAND. Mr. President, will the Senator yield for a question?

Mr. LANGER. I yield.

Mr. KNOWLAND. I wish to inquire of the able Senator from North Dakota, in view of his statement and in view of the parliamentary situation with which the Senate is faced on the question of filibustering on a motion to take up a matter, how he anticipates he will ever get a chance to vote on any civil-rights legislation if we cannot even get it before the Senate for a vote.

Mr. LANGER. It would be delightfully simple. Just as the Senator from Michigan said today in his magnificent address, it will be possible to enact civil-rights legislation just as soon as either party makes up its mind it is going to do it—any time Republicans will make the sacrifices necessary to do it. The Senator will remember last year I brought up these Republican platform pledges. The junior Senator from Oregon rose on the floor and said he would bring up his cot every day, he would stay here a week, or a month. Just as soon as either the Republicans or the Democrats make up their minds to get the civil-rights program through it can be done. Instead of that, we adjourned for 3 days at a time until toward the end of the session. Then, in the last 2 or 3 weeks, some of us who were opposed to the drafting of our boys under selective service were kept here 2 nights before the Republican convention at Philadelphia, all tired out. We were kept in session because Senators wanted to adjourn and go to the convention. Although many days had been wasted during the month or 2 or 3 months before that, there was an adjournment 3 days ahead of time. So I close by telling the people of this country that I am unqualifiedly for the civil-rights program and will help to enact it—if only the Democratic majority will bring it up.

STATEMENT OF HON. THOMAS H. KUCHEL, A UNITED STATES SENATOR FROM THE STATE OF CALIFORNIA

[From the Congressional Record of January 4, 1957, p. 122]

Mr. KUCHEL. Mr. President, the simple, fundamental issue in this debate, to my mind, is whether the Senate of the United States approves filibusters. Shorn of all legalistic argument, that is what is being decided here today.

Yesterday a number of us, from both sides of the aisle, Democrats and Republicans, coauthored a motion, which reads:

"In accordance with article I, section 5, of the Constitution, which declares that 'each House may determine the rules of its proceedings,' I now move that this body take up for immediate consideration the adoption of rules for the Senate of the 85th Congress."

Mr. President, that proposed motion rests upon the American Constitution, which provides that each House of the Congress may adopt its rules. The House of Representatives has seen fit, over the years, to exercise the right given to it by the Constitution. The Senate of the United States, by acquiescence, by inaction, has continued in effect, tacitly, the rules of prior years.

Mr. President, the old rules of the United States Senate have permitted filibustering, to which some of us earnestly and vigorously object. What is a filibuster? My definition would be that it is irrelevant speechmaking in the Senate, designed solely and simply to consume time, and thus to prevent a vote from being taken on pending legislation. To my mind a filibuster is an affront to the democratic processes and to the intelligence of the people of the United States.

It is difficult, if not impossible, to stop a filibuster in all instances; and, under the old rules, absolutely impossible to stop filibusters in some instances. I refer, Mr. President, to rule XXII of the rules of the Senate. That rule provides that a constitutional two-thirds of the Members of the Senate, or 64 Senators, are required to vote in favor of so-called cloture, after which, in accordance with the rule, if 64 Senators so vote, each Senator has an additional hour of debate.

That is a higher standard than is required of the United States Senate in sitting as a court of impeachment to find a constitutional officer guilty, and to eliminate him from his official responsibilities. The Constitution of the United States provides that, sitting as a court of impeachment, the Senate of the United States shall find a man guilty merely by two-thirds of those present. That is not 64 votes. That is not a constitutional two-thirds. That, by the Constitution itself, is two-thirds of those Senators present and voting.

I also observe, for the benefit of my colleagues, that a declaration of war, requires but a majority of those present and voting in each House of the Congress of the United States. Why should we have more stringent rules to bring issues to finality?

Mr. President, there is a joker in rule XXII. It has been alluded to in this debate. The fact is that in section 3 of rule XXII, it is specifically provided that any motion to change the rules of the Senate is not subject to cloture at all; and that means, of course, it is possible to filibuster to death, ad infinitum, any motion which might be made to change the rules.

Let me again recall the sturdy words of a distinguished American citizen, a great Republican of his day, the late Vice President, Charles G. Dawes, who said years ago:

"I will state the principal objections to the Senate rules as they stand:

"1. Under these rules individuals or minorities can at times block the majority in its constitutional duty and right of legislation. They are therefore enabled to demand from the majority modifications in legislation as the price which the majority must pay in order to proceed to the fulfillment of its constitutional duty. The right of filibuster does not affect simply legislation defeated but, in much greater degree, legislation passed, continually weaving into our laws, which should be framed in the public interest alone, modifications dictated by personal and sectional interest as distinguished from the public interest.

"2. The Senate is not and cannot be a properly deliberative body, giving due consideration to the passage of all laws, unless it allots its time for work according to the relative importance of its duties, as do all other great parliamentary bodies. It has, however, through the right of unlimited debate surrendered to the whim and personal purposes of individuals and minorities its right to allot its own time. Only the establishment of majority cloture will enable the Senate to make itself a properly deliberative body. This is impossible when it must sit idly by and see time needed for deliberation frittered away in frivolous and irrelevant talk, indulged in by individuals and minorities for ulterior purposes.

"3. The rules subject the people of the United States to a governmental power in the hands of individuals and minorities never intended by the Constitution and subversive of majority rule under constitutional limitation. In the words of Senator Pepper, of Pennsylvania:

"The Senate, by sanctioning unlimited debate and by requiring a two-thirds vote to limit it, has in effect so amended the Constitution as to make it possible for a 33-percent minority to block legislation."

"4. The present rules put into the hands of individuals and minorities at times a power greater than the veto power given by the Constitution to the President of the United States, and enabled them to compel the President to call an extra session of Congress in order to keep the machinery of Government itself in functioning activity. The reserved power of the States in the Constitution does not include the power of one of the States to elect a Senator who shall at times control a majority or even all the other States.

"5. Multiplicity of laws is one of the admitted evils from which this country is suffering today. The present rules create multiplicity of laws.

"6. The present rules are not only a departure from the principles of our constitutional Government but from the rules of conduct consistent therewith which governed the United States Senate for the first 17 years of its existence and which provided for majority cloture."

Mr. President, I devotedly believe in full and complete debate on every issue confronting the Senate and the American people. So, I feel assured, do all of us. But that is a far different thing from a situation where Senators speak for long hours, and sometimes for long days and long weeks, not to argue the merits or demerits of a public question, but solely and only to waste and consume time, and thus to frustrate and prevent a final decision by the Senate on an issue before it. How can any reasonable person uphold such tactics as that which occurred some years ago when the Senate ludicrously debated for 2 weeks a motion to amend the Chaplain's prayer?

In my first year in the United States Senate I saw a filibuster. I saw the Senate sit for 24 hours a day, never stopping, in an attempt to wear down physically the filibustering Senators, so that through sheer physical exhaustion, and nothing else, the filibuster might be broken and a vote be taken on a bill, incidentally, which had the enthusiastic support of a great majority of us.

I decline to accept the parliamentary theory that a physically and mentally exhausted Senate should be a prerequisite to a vote being taken on any matter. Furthermore, I hardly think that an exhausted Senate can intelligently pass bills.

It is argued that the Senate is a continuing body, and therefore a motion such as has been made cannot be in order under the old rules. Certainly under the terms of the Constitution our motion is in order. What more authority do you need?

I wish to refer to the distinguished late Vice President, Alben Barkley, who said, when he sat in the presiding officer's chair, and I read from page 10 of the proceedings of January 3, 1953:

"The organization of the Senate is an inherent right of the Senate, as it is of any sovereign body, and all that has taken place up to date has been under that inherent right."

Our motion is grounded upon the American Constitution, and it is upon that basis that I deny that this motion is out of order. Years ago I was a member of the California State Senate. That senate is composed of 40 members. The California constitution provides that each 2 years half of them, or 20 members, shall be elected. The rules of the Senate of the State of California, in which I sat for a few years, provided then, as they provide now, that at the beginning of each session of the legislature the senate shall adopt its rules of procedure.

Four years ago, when I was a new Member of the Senate, the same question was before us. I took the position then that I take today, and I believe sincerely that I do so completely in the public interest. Two of us who cast our vote then, in that fashion, here on the Republican side, are here today, the senior Senator from New York [Mr. Ives] and myself.

We will not be so lonely today. I am proud of the greatly increased support both sides of the aisle are showing for their cause now.

I am proud to say that I cast my vote according to my own conscience. No one intimidates me. No one bullies me into taking positions on public questions. I devoutly believe that the motion which some of us have made ought to be adopted, making the pending business the consideration of adoption of rules of the Senate of the 85th Congress.

Meanwhile, the distinguished majority leader [Mr. Johnson of Texas] has made a motion to lay our recommendation on the table. I vigorously object to that motion, and I hope that a majority of my brethren on this side of the aisle and the other side of the aisle will join in defeating the motion to lay on the table.

Mr. President, I ask unanimous consent to conclude my comments by placing in the Record at this point several paragraphs by a distinguished Republican Senator, the late Henry Cabot Lodge, who spoke up vigorously against the filibuster.

There being no objection, the statement was ordered to be printed in the Record, as follows:

"Of the two rights (of debating and of voting) that of voting is the higher and more important. We ought to have both and debate certainly in ample measure; but, if we are forced to choose between them, the right of action must prevail over the right of discussion. To vote without debating is perilous, but to debate and never vote is imbecile.

"As it is, there must be a change, for the delays which now take place are discrediting the Senate, and this is greatly to be deplored. The Senate was perhaps

the greatest single achievement of the makers of the Constitution, and anything which lowers it in the eyes of the people is a most serious matter. * * * A body which cannot govern itself will not long hold the respect of the people who have chosen it to govern the country."

If the position we take in the debate is upheld by a majority of Senators, we can, I feel assured, look forward to full and complete debate on every issue, but without the evil of filibustering.

Senator TALMADGE. I have three other statements to be inserted at the conclusion of the testimony. They are not statements from Senators.

The next witness will be Mrs. Ray L. Erb.

How do you do. We appreciate your coming.

Mrs. Erb is the national defense chairman of the Daughters of the American Revolution.

STATEMENT OF MRS. RAY L. ERB, NATIONAL CHAIRMAN, NATIONAL DEFENSE COMMITTEE, DAUGHTERS OF THE AMERICAN REVOLUTION

Mrs. ERB. My statement is very brief, and, in contrast to the previous speaker, exceedingly brief.

Mr. Chairman and gentlemen of the committee, I am Mrs. Ray L. Erb.

I wish to express my gratitude for the privilege of presenting my statement relative to proposed changes in Senate rule XXII before the subcommittee of the Committee on Rules and Administration.

I am chairman of the national defense committee, National Society, Daughters of the American Revolution.

Every member of the National Society, Daughters of the American Revolution, has taken an oath to support the Constitution of the United States of America; therefore, has assumed a solemn obligation to work for the protection and preservation of this superb body of laws.

The first amendment guarantees freedom of speech.

Unlimited debate in the Senate is an expression of free speech and should not be curtailed or denied.

The Constitution guarantees to every State in this Union a republican form of government. Therefore, every State, as a political unit, is entitled to a full representation in Congress.

It follows, that in justice to their constituents, every Senator should have the privilege of unlimited analysis of all issues presented, and the opportunity for discussion of the effect such issues might have upon fundamentals of our Government as translated into action, and the possible results of such action in each and every section of our country.

The Senate has the responsibility of educating, informing, and protecting the American people. The rule of unrestricted debate is an important aid in the carrying out of these duties. Is it not possible that there is more danger than merit in restriction of free speech, as indulged in by filibustering, for, could not such a decision result in justification for further free-speech limitations? Would this be wise?

Unlimited debate could prevent decisions which in reality were the results of emotion or pressure by a majority.

Prolonged debate would not prevent the eventual passage of good legislation, and undoubtedly might prevent some bad legislation.

In an address given on February 22, 1832, in Washington, Daniel Webster said:

As men may be protected against murder but cannot be guarded against suicide, no government may be shielded from the assaults of external foes, but nothing can save it when it chooses to lay violent hand on itself.

The limiting of debate in the Senate would be the laying on of violent hands.

The National Society, Daughters of the American Revolution, disapproves of any change whatsoever in Senate rule XXII relating to cloture, and we request the Rules Committee of the Senate, when acting upon pending proposals relative to a change in Senate rule XXII, to protect the Constitution and constitutional rights of free speech as established by the first amendment.

Senator JAVITS. I have just one question, Mrs. Erb.

Thank you for coming and giving us your views.

Has any resolution been adopted by the Daughters of the American Revolution on this subject?

Mrs. ERB. No, it has not, Senator.

Senator JAVITS. You say the organization itself feels this way. What is the authority?

Mrs. ERB. The authority is the executive committee which functions between our national conferences.

Senator JAVITS. Have they adopted a resolution?

Mrs. ERB. The executive committee has adopted such a resolution.

Senator TALMADGE. Thank you very much, Mrs. Erb, for your appearance and your fine statement.

The next witness will be Prof. James Burns, professor of political science, Williams College, Williamstown, Mass.

STATEMENT OF JAMES M. BURNS, PROFESSOR OF POLITICAL SCIENCE, WILLIAMS COLLEGE, WILLIAMSTOWN, MASS.

Mr. BURNS. Mr. Chairman, my name is James Burns; my residence is at 115 Park Street, Williamstown, Mass. I am professor of political science at Williams College.

I am appearing at the invitation of a member of the subcommittee and I am not appearing on behalf of any organization.

My statement is in favor of Senate Resolution 17, or of any equally effective or more effective means of strengthening the procedures of the United States Senate.

Mr. Chairman, I do not wish to repeat the many arguments that have been presented in past hearings before the Senate Rules Committee or in Senate debate in favor of enabling the Senate to act as well as to deliberate.

I wish only to add a hearty amen to those who have contended so eloquently that the present arrangements violate the fundamental principle of majority rule, that they bring the Senate into disrepute, that they are a weak spot in our democratic system, and that they violate the spirit of our Constitution.

What I do wish to do is to present two ideas that I believe have been ignored or underemphasized in previous debate, and then to ad-

dress myself to the urgent and difficult question of how to get rid of these undemocratic arrangements.

Senator JAVITS. Would you yield for a minute? I apologize for not having welcomed you. We invited you, that is, my office did, to appear here and testify; and I am very glad to see you here.

I am very grateful to you for the trouble you have taken.

Mr. BURNS. Thank you very much.

Senator JAVITS. Thank you, Mr. Chairman.

Mr. BURNS. The first of these ideas relates to the role and place of the United States Senate. Americans—and especially Americans from our Southland—like to think of the Senate as “the greatest deliberative body in the world.” But we must remember that debate is not an end in itself. Its purpose is to serve as a means of reaching rationally agreed-on ends.

When deliberation is used not to reach rational ends, but as a means of thwarting rational action, the whole meaning of deliberation becomes distorted and the description of the Senate as the greatest deliberative body becomes a mockery.

If we want really to have pride in the Senate, we must permit the majority to act without violating the proper rights of the minority. What are the proper rights of the minority? It is at this point that past debate, it seems to me, has failed to develop the real protection for the minority.

The real right of the minority is the prevention of some action by the majority that the minority feels is too outrageously unjust and iniquitous to be borne.

The real question is, What is the test of a position that is flagrantly unjust? Because the minority says it is so?

Of course not—the minority naturally says that the majority is being unjust.

The only possible test in a democracy as to whether the majority is treating a minority unjustly is the opinion of the people as a whole once the minority has had full opportunity to state its case before the people. Time and time again we have seen minorities in this country—even minorities of one—take their case before the people and win it; this right of appeal to public opinion is, indeed, the basic safeguard of individual liberty.

The practical implication of this situation is quite simple: The minority must have full right to take its case before the people as a whole, but if it is unable to rally significant support to its cause, if it is unable to weaken the public opinion behind the position of the majority, then the minority has no right to resort to sheer obstruction.

This argument brings me to the second of the two main points I wish to make. We hear much talk about how a majority of the Senate or a majority of the American people may become tyrannical and despotic and mercilessly override the rights of the minority; this contention is the fundamental argument used to support the right to filibuster bills to death.

I think that it is about time someone rose to defend the majority rule principle against such accusations.

The person who holds that majorities tend to become tyrannical simply does not understand American society, does not have faith in the American people. If we were some class-bound society, divided

into a radical working class element and a small class of capitalists, like some unfortunate societies we can think of, then the antimajority position might have some merit. But we are not.

We are, in great degree, an open society composed of many classes that shade into one another, composed of a tremendous diversity of viewpoints, regions, sections, races, religions, social groupings and the like.

The practical implication of this argument is also simple. If I am right in my picture of America as a highly diverse and fluid society, then by definition it follows that any idea or policy that can win majority support in such a society can hardly be tyrannical or despotic. It may, of course, be wrong; but that is a different story.

No, it is not the majority that is likely to be despotic or cruelly unjust in our society, it is the minority that may be unjust because it often does represent only 1 region or 1 narrow class attitude.

Senate debate on this issue, in my judgment, would be elevated if we heard much less of majority tyranny and much more of minority tyranny, when some minority can balk the wishes of the great majority of people.

I turn now to the toughest question of all—What can be done about the present rules that allow dangerous and undemocratic filibusters?

I hope very much that the Senate will adopt Senate Resolution 17, and that such arguments as I have presented may have some small part in that development. But if those Senators now favoring the almost unlimited right to filibuster cannot be won over by reason, then I suggest it is high time that the Senate majority favoring majority rule proceed to effective action.

What effective action do I mean? There have been many suggestions that the only hope is to change the rules by out-filibustering the filibusterers.

The majority, it has been said, might simply win the battle through the exhaustion of the minority. I am doubtful of this possibility. Such an attempt to overcome the filibusterers would, I think, make such heroes and martyrs of the filibusterers in their home States that it would simply strengthen their hand, politically.

Such a battle would deeply exacerbate the already strong feelings between northerners and southerners, both inside and outside the Senate.

Such a battle would require proper timing—but what is the proper time?

It would be difficult at the start of a session, and virtually impossible at the conclusion, when there is a press of business. In short, a direct assault on the present rules would probably fail, and, in any event, it might produce dangerous and unpredictable side effects.

There is, I think, a simpler method, provided that the necessary number of Senators possess the necessary resolution. The events of last January make it seem likely that at the beginning of a new Congress a point of order can be made, and upheld by the presiding officer or by a majority vote of the Senators present, that the former rules of the Senate expired with the previous Congress, and that new rules must be voted.

This point of order would be both debatable and debated, of course, and the crucial problem of this approach is whether the presiding officer holds that during discussion of this matter the Senate is oper-

ating under the old rules—allowing an endless filibuster—or under general parliamentary rules that would allow the question to be fairly deliberated, but would also enable a majority of the Senators present to make a decision.

I infer from the statement of Vice President Nixon last January that the Senate might have to debate such a matter under the old rules, but this is only an inference.

Since this question involves matters of Senate procedure beyond my competence, I will say no more about the specific procedure needed to break the present impasse, except to add that a resolute majority, with the ground well prepared, with public opinion carefully and thoroughly informed on the merits of the matter, and with the cooperation of the presiding officer, could, I believe, adopt rules that befit a Senate legislating in the 20th century.

I wish only to make a general observation on the merits of the issue.

Whenever the question arises as to the adoption of new rules, a Senator is sure to rise to assert that under our constitutional system of checks and balances the Senate is a continuing body and hence the rules of a previous Senate bind a newly composed one. This, I submit, is not true.

Neither the letter nor the spirit of the Constitution holds that the Senate is a continuing body.

Senator TALMADGE. Would you yield at this point?

Has not the Supreme Court of the United States held that the Senate is a continuing body?

Mr. BURNS. Not in my judgment, sir.

Senator TALMADGE. It has so held.

Proceed, please.

Mr. BURNS. The Constitution simply established the Senate as a body composed of men with overlapping terms. The purpose was, of course, to prevent the Senate from being unduly influenced by a sudden turn of public opinion.

Now, this arrangement does not decree that the rules of the Senate must be "continuing." Quite the contrary—the spirit of the Constitution is that as the Senate becomes composed of new Members under this staggered method, it must deliberate and act accordingly.

More specifically, if the Senate over a period of years comes to be composed of a majority in favor of effective civil rights legislation, if it becomes so composed, not as a result of a sudden turn of public opinion, but after long experience and thought throughout the Nation, then, under the spirit of the Constitution, the Senate should act.

If our Founding Fathers had wanted a minority of Senators to be able to obstruct lawmaking, I imagine that they would have so provided in the Constitution.

May I say in conclusion, Mr. Chairman, that if there is a note of urgency in my final suggestion as to necessary action, it may arise in part from the fact that recently I made a trip to Russia and left that country with a feeling of urgency about the years immediately ahead of us.

I feel that the Soviet Union is far stronger industrially and economically than we realize, that there is a tremendous potential there that will emerge despite the iniquities and injustices of its political system. I think that we face a long-term struggle with Russia in

the economic and social sphere, even if we maintain a military balance against the Kremlin.

Feeling thus, I am all the more eager that we look searchingly for the chinks in our own democratic armor, that we ferret out the governmental weaknesses that prevent us as a people from dealing quickly and effectively with our economic and social deficiencies at home.

As a student of parliamentary government here and abroad, as one who has walked through the Halls of Parliaments that once were the proud spokesmen and exponents for vigorous democracies, I am struck by the historic fact that those parliaments that could not deliberate meaningfully and act effectively for their peoples became mournful symbols of the failure of democracies to respond to challenges from within and without.

Let us make the Senate really the greatest deliberative body in the world by paying its debates the ultimate tribute—the tribute of taking them seriously as the precursors to thoughtful action.

That, sir, concludes my statement.

Senator TALMADGE. Thank you very much for your very fine statement. I have 1 or 2 questions I would like to ask, please, Professor Burns. You have stated that you are a student of parliamentary procedures in other governments. What other parliamentary procedures have you studied besides those of the United States Senate?

Mr. BURNS. I actually said I was a student of parliamentary government, and by this I mean that I am a student of the political pressures that operate through these parliaments. To answer your question in that framework, I have particularly studied the operation of the British Parliament.

Senator TALMADGE. Did you ever make a study of the German Reichstag?

Mr. BURNS. No; I have not, in terms of procedures.

Senator TALMADGE. Do you know whether they had a debate-limitation rule under the tyranny of Adolf Hitler?

Mr. BURNS. I assume they did, but I did not include the Reichstag as a parliamentary body.

Senator TALMADGE. Do you not think, when Hitler first came to power, that a strong group of German men with open and free discussion might have prevented some of the tyranny he imposed on the German people and later on the world?

Mr. BURNS. No; I do not.

Senator TALMADGE. You don't think it would have helped at all?

Mr. BURNS. No. I think the things that weakened the German Republic were precisely the kind of procedures in the German Republic system prior to Hitler that made it difficult for the German Republic to cope with the needs of the people, and hence helped pave the way for a man who said he could solve the problems of the people.

Senator TALMADGE. In other words, free discussion in parliament would not have helped, sir?

Mr. BURNS. No, sir. When I say free discussion, I think free discussion would have helped, but I don't think unlimited discussion would have helped. On the contrary, I am sure from experience in other parliaments that the Communists and other extremists in the Reichstag would have used those obstructionist measures to prevent the republican government from doing the things necessary for the people.

Senator TALMADGE. Senator?

Senator JAVITS. Thank you. I just wanted to thank you, Professor Burns, for giving us the benefit of your counsel, and I found your statement very interesting, very provocative, very informative, and I hope it will be of use to us.

Senator TALMADGE. I appreciate your coming very much.

Mr. BURNS. Thank you very much.

Senator TALMADGE. Mr. Omar B. Ketchum, director, national legislative service, Veterans of Foreign Wars of the United States.

STATEMENT OF OMAR B. KETCHUM, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES, ACCOMPANIED BY FRANCIS McNAMARA, ASSISTANT LEGISLATIVE DIRECTOR

Mr. KETCHUM. Mr. Chairman, Senator Javits, I would like first to present my assistant legislative director, who is here with me this morning. I took the liberty of bringing him to the table because he has certain information in the event questions are asked.

Mr. Francis McNamara.

Senator TALMADGE. Thank you. We are delighted to have you with us, also, Mr. McNamara.

Mr. KETCHUM. I should also like to make a preliminary statement, Mr. Chairman, to the effect that the question in this hearing has arisen between our national conventions, and, because of that, we have no firm national-convention resolution on this subject. The statement I am about to make here this morning is based on the authority given our commander in chief to act between national conventions, and on my 17 years of experience, living with the organization and watching its conventions, and the types of resolutions which it has adopted over the years.

Now, undoubtedly, this question will be presented at our forthcoming convention in the latter part of August, but the commander did not know whether these hearings would be in existence after September. For that reason, he suggested that we make this preliminary statement, as we ascertain it, on what he believes would be the sentiment of the organization.

Senator JAVITS. In short, Mr. Ketchum, it is his personal position.

Mr. KETCHUM. Well, personal position, as well as my contribution, based on my years of experience with the types of resolutions our organization has adopted, Senator Javits; such as support of the Bricker amendment to the Constitution; such as opposition to any form of world government, opposition to the Atlantic Union. I mean, it seems——

Senator JAVITS. Do you equate the change in rule XXII with the Bricker amendment?

Mr. KETCHUM. Somewhat, yes. Somewhat, as a matter of protection of America, what we call protection of American sovereignty, protection of American institutions. In other words, perhaps a conservative position of the type which the organization has consistently taken.

Senator JAVITS. But this is not the action of the VFW?

Mr. KETCHUM. No; not the action of the national convention; that is right.

Senator JAVITS. Okay.

Mr. KETCHUM. I appreciate your offer to appear here this morning to speak for the Veterans of Foreign Wars on the subject of cloture in the Senate.

Senator JAVITS. Will you yield at this point? That is not correct, is it?

Mr. KETCHUM. Theoretically, yes; it is. The commander in chief, under the constitution and bylaws, has the authority to speak for the organization in between national conventions. Now, the convention might not support him in the future, but the commander is given the authority in between conventions, where there is no specific position taken, to take a position for the organization.

Senator JAVITS. Thank you.

Mr. KETCHUM. The question of shutting off debate in the world's most exclusive deliberative body is an old and controversial subject. Since the 18th century, various rules and devices have been proposed as a means of terminating debate or ending the filibuster, which is a device for literally talking a bill to death.

At present, under Senate rule XXII, debate can be shut off by a vote of two-thirds of the Senators duly chosen and sworn, except in cases of debate concerning the Senate's standing rules. In that case, there is no limit to debate.

The resolutions which would amend rule XXII and which are now before this subcommittee for consideration—Senate Resolutions 17, 19, 21, 30, and 32—would make cloture more easily accomplished by amending or repealing section 3 of rule XXII, and by amending section 2 of the same rule so that a two-thirds vote of all Senators duly chosen and sworn would not be required. These bills variously propose that cloture be effected by a majority vote of the authorized Senate membership, by a majority of those present and voting, by a two-thirds vote of Senators present and voting, and by a two-thirds vote of those present and voting, provided they are not less than a majority of all Senators duly chosen and sworn.

It is our opinion that, all things considered, it would be better to let Senate rule XXII stand as it is rather than change it as proposed in any of the above-mentioned resolutions.

Cloture rules in the Senate have varied over the years. Generally speaking, filibusters have always been possible despite the efforts to end them that were started about the middle of the last century when they were introduced as a Senate stratagem. Something close to unlimited debate has become a tradition and hallmark of this body—and something that should not be upset except for the most compelling reasons.

Our major interest in considering this issue should not be the passage of legislation which may be desired by a majority even though it is bitterly opposed by a significant minority, but rather what is best for this country in the long run. There may be temporary diplomatic and propaganda value in passing certain legislation, but, in the long run, greater harm than good may be done by forcing such legislation through the Senate by weakening the present cloture rule.

I believe all thinking people must be impressed by the fact that today, both here and abroad, there is a tendency toward bigger and

more centralized government. This is a natural result of the increasing complexity of our lives in many fields. But big and centralized government is always, of its very nature, a threat to individual liberties, and this is something we cannot afford to forget. If anything, we need more protection against government today than ever before. We need a revival of the old healthy skepticism of government that characterized Thomas Jefferson and our Founding Fathers. Rather than loosen the reigns on government, we should try to tighten them. We need to be certain that our system of checks and balances is in good order—and the tradition of nearly unlimited debate in the Senate has become a part of that system of checks and balances.

Senator TALMADGE. Mr. Ketchum, will you yield at that point? I was very impressed with what you said about big government. Is it not true that liberties of the people have always been destroyed by governments, instead of by a few individuals?

Mr. KETCHUM. Well, it would seem to me, based on my knowledge of history, Mr. Chairman, that that is essentially correct.

Senator TALMADGE. Government destroyed the liberty of the people in Russia, didn't it?

Mr. KETCHUM. That is correct.

Senator TALMADGE. Isn't it also true that government destroyed the liberty of the people in Italy under Mussolini?

Mr. KETCHUM. That is correct.

Senator TALMADGE. And that government destroyed the liberty of Germany under Adolf Hitler?

Mr. KETCHUM. That is correct.

Senator TALMADGE. In every other case that I recall from history, the same has been true.

Senator JAVITS. Isn't it a fact, in each of the instances mentioned by Senator Talmadge, it was an individual who manipulated government for that purpose—whether it was Lenin, Trotsky, Mussolini, or Hitler?

Mr. KETCHUM. That is correct, but I am coming to another important point that will illustrate that point.

Senator TALMADGE. It became the government, whether an individual initiated it or not.

Mr. KETCHUM. I get into that, the danger involved.

In addition to the tendency toward big government, there is another factor which today poses a potential threat to our traditional liberties and makes reasonable obstacles to the easy termination of Senate debate more desirable than ever before.

Tremendous progress has been made in the field of communications. We have greater newspaper coverage than ever before and, in addition to our almost universal distribution of the radio, we have the relatively new element of television. The potential for good in these communication mediums is tremendous.

Although far from perfect, they have undoubtedly helped to make many Americans better informed about their Government and vital matters of national and foreign policy.

At the same time, however, these mediums also have a potential for mischief. As one example, they provide a means by which a Chief Executive with dictatorial leanings and spellbinding ability could create an unreal and unfounded sense of urgency on a certain issue, and thus arouse great numbers of people to support measures that may

actually threaten their welfare and fundamental rights. Khrushchev recently paid tribute to the propaganda value of television.

Inasmuch as legislation can be rushed through the House with little or no debate, it is more important than ever that some means be present to prevent the same thing from happening in the Senate. Making it easier to invoke cloture in this body would have the effect of breaking down our protection against such a development.

I want to make it clear that in pointing this out, I have no intention of implying sinister motives of any kind to our present President or any other important officeholder.

This, and my remarks about the need for skepticism of government, are no more than observations on the nature of government and the kind of persons who occasionally comprise it. It could happen here.

If I may be permitted to digress for a moment, we go back now to our friend Adolf Hitler, and Mussolini, and the tremendous individual appeal that they had to the people through the medium of mass communication, in which they swept them off their feet and with no control in the legislative body, were able to wreak havoc upon the people in the long run.

Senator JAVITS. Would you mind answering this question, however: Isn't it a fact that Mussolini and Hitler came to power because the people were frustrated by legislatures that didn't legislate and do for them the things that needed to be done?

Mr. KETCHUM. That could be true. I don't know.

Senator JAVITS. And a little band of willful men can tie up the Senate of the United States by filibustering, so that could bring on a legislative dictatorship; isn't that true?

Mr. KETCHUM. I don't agree it would be easier to bring on a dictator, through the imposition—

Senator JAVITS. I didn't say that. I said if a legislature finds itself impotent, that is just as much an avenue as any other, by which a dictator may be brought on, who says to the people, "Your legislature won't help you; I will."

Mr. KETCHUM. I come to that point, whether this will serve to flaunt the will of the people in the long run.

Senator TALMADGE. Will you answer this question, please? Can you cite any illustration in all of history where free debate has created a dictatorship?

Mr. KETCHUM. No, I cannot, Mr. Chairman.

Senator TALMADGE. Proceed, please.

Mr. KETCHUM. It has often happened in the past that majorities, including well-meaning ones, have shown considerable disregard for the rights of minorities. At times, even courts have exhibited the same lamentable failure. This is a country whose distinguishing characteristic is concern for individual and minority rights. The individual and the minority must be protected against an unreasonable majority at all times.

In considering this factor we must bear in mind that Senate minorities represent not populations, but political entities, self-governing States. The minority protection in the Senate concerns the rights of the separate States, all of which are equally sovereign under the Constitution.

If the characteristics that distinguish the Senate from the House are to be preserved, that equality must be maintained. The right to unlimited debate—within reasonable bounds—is a way of protecting that constitutional equality.

It appears to us that the present rule is reasonable and that it would be dangerous to change it so that less than two-thirds of Members of the Senate could override more than one-third on any matter. Surely, there is serious question about the immediate desirability of any piece of legislation if two-thirds of the Senate's Members cannot be rallied to support it by voting for cloture.

Loosening up the requirements for cloture will remove the almost free debate that has served in the past as a safeguard for the rights of States.

In spite of the fact that filibustering has been possible and used in the Senate for over 100 years, the Senate on the whole has been able to function well. Some fairly important bills have been killed temporarily by filibusters, but in most cases these same bills have subsequently been passed by the Senate. Only a relative few have been permanently killed.

There is no doubt that the filibuster can be abused, but so, too, can many other rights, privileges and institutions in our Government.

Today, Communists are obviously abusing the Bill of Rights, but no intelligent or serious-minded person is advocating that we throw out the Bill of Rights for this reason. The same applies to the filibuster.

The opinion of a Senate majority or a majority of Senators present and voting on any issue does not necessarily express the opinion of the majority of the people of this country. The Senate considers many issues before public opinion is formed on them. The claim that filibusters frustrate the will of the majority of the people is therefore often not tenable.

It is a fact, too, that the passage of a law which is strongly opposed by a significant minority of the people—and perhaps even by a majority in cases where public opinion is not formed—does more harm than good.

I believe that, all in all, it would have been a good thing if someone had been able to filibuster the 18th amendment, the prohibition amendment, to death.

In time, it became clear that the majority of the people in this country did not really support this amendment. It was eventually repealed—but not before tremendous harm had been done.

It encouraged crime and gangsterism and, of course, did not solve the drinking problem which, like many others, cannot be solved simply by legislation. Only time and education will provide sound solutions for many of our most vexing problems.

And, Mr. Chairman, I would like to digress for a moment to point out that one of the great statesmen of this country, only a day or so ago, in a copyrighted article in the American newspapers, in discussing what should be done, where a President is incapacitated for duty, very emphatically stated:

We must not hurry and jump to conclusions on something that should be done. We must take our time, look at this carefully, before we hurriedly enact some legislation or measures to provide what shall happen when a President becomes unable to fulfill the duties of his office.

And I am referring now to former President Harry Truman.

It has often been said that the filibuster gives a few Senators a veto power. That may not be a bad thing.

Our country demanded the power of the veto in the United Nations, so that it would be able to protect its interests against an overwhelming majority vote of the 80 or so nations in that organization. Most Americans supported, and still support, that demand and the protection it has brought to this country in the world agency.

For this reason, strong argument can be presented for what is actually a very limited veto power in the Senate for the protection of the individual States which make up this Nation.

In closing, I would again like to express my appreciation for the opportunity to testify on this subject.

Senator TALMADGE. Any questions?

Senator JAVITS. I don't want to detain Mr. Ketchum. I just have two questions, both very brief.

Does the VFW have any resolution which it adopted on the so-called civil-rights measure?

Mr. KETCHUM. They do not.

Senator JAVITS. Is it intended to submit to them this August, at the time of the Convention, a resolution on rule XXII?

Mr. KETCHUM. I am not even sure a resolution on rule XXII will be submitted. Certainly I am not submitting one, but one may come. I have no advance knowledge that any resolution will come up on civil rights. We have attempted over the years to avoid becoming involved in the civil rights issue.

Senator JAVITS. Well, you are involved in it right up to your ears with this testimony, are you not?

Mr. KETCHUM. I don't think I have attempted to convey anything about civil rights here this morning.

Senator JAVITS. As a matter of fact, you know, do you not, that that is the principal fulcrum of this argument, that is, because the civil rights bills have been blocked?

Senator TALMADGE. Will the Senator yield?

Mr. KETCHUM. It would be civil rights today.

Senator TALMADGE. Essentially, this rule was adopted in 1917. I don't believe there was much agitation for giving the Attorney General inquisitorial powers at that time.

Senator JAVITS. Is there anything in the Constitution about free and unlimited debate in the Senate?

Mr. KETCHUM. In the Constitution of the United States?

Senator JAVITS. Yes.

Mr. KETCHUM. No. I don't recall anything.

Senator JAVITS. As a matter of fact, isn't it true that when the Senate was first organized, debate could be shut off by a majority?

Mr. KETCHUM. Yes, sir; I assume until there was a rule, a cloture rule, unlimited debate ruled.

Senator JAVITS. That was the case from the time of organization until 1806. I am not trying to run a quiz on the questions. That is the historic fact.

Thank you very much.

Senator TALMADGE. Thank you, Mr. Ketchum. We appreciate your statement.

Dr. Albert B. Saye.

I would like to state for the record that Dr. Saye and I were students at the University of Georgia together. He appears here today at my request. He is one of the finest and most outstanding students of history and constitutional government in our section of the country and the Nation.

We are very happy to have you with us, Dr. Saye.

Senator JAVITS. May I say I join my colleague in welcoming you.

STATEMENT OF DR. ALBERT B. SAYE, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF GEORGIA, ATHENS, GA.

Mr. SAYE. Thank you.

I understand I am not to speak more than 30 minutes, and I think that I can confine my remarks to a shorter period.

There will be a good bit of similarity in what I have to say with some of the comments of the previous speaker. There will be a great contrast between what I have to say and what was said by the former political scientist speaking this morning.

I think on the matter of the Senate being a continuous body, Mr. Chairman, it might be well to mention the name of the case—

Senator TALMADGE. I wish you would put it in the record.

(The pertinent portion of the Supreme Court decision in *McGrain v. Dougherty* may be found on p. 147.)

Mr. SAYE. *McGrain v. Dougherty*, in 1927, in which the Supreme Court specifically ruled that the Senate was a continuous body.

Senator JAVITS. Would you yield? My recollection of that case is that there was dicta in it, which related to certain aspects of it.

Mr. SAYE. You are quite right.

Senator JAVITS. The case didn't rule that the Senate was a continuing body.

Mr. SAYE. You may be right. This was part of the opinion of the Court in this particular case in 1927. My views of the United States Senate are not—well, from the historical point of view, I think that the Senate has been held in much higher esteem than would be inferred from some of the previous statements. But I have a prepared statement. I will go a little faster, I think, if I begin with it.

Senator TALMADGE. Proceed. We don't want to hurry you unduly, but, at the same time, we do have many witnesses to hear, Doctor. We want you to take your time in your own way.

Mr. SAYE. Gladstone described the United States Senate as "the most remarkable of all the inventions of modern politics." It occupies a unique place among legislative bodies. It was designed by the Federal Convention as a check upon hasty actions by the House of Representatives, as a participant in executive functions, as a guardian of State rights, and as a stabilizing influence in the whole constitutional system. Joseph Story called it the "balance wheel" in our Government. It has served its purpose well.

Since its organization on April 6, 1789, there has never been a time when the Senate, as an organized body, has not been available at the President's call, or in accord with the terms of its own adjournment, for the transaction of public business. Its rules, adopted 10 days after its organization, have remained in force from 1789 to 1957 without reaffirmation. Amendments to these rules have been adopted in the

regular course of business, but it is a late date, indeed, to suggest that the Senate is not a continuous body. Every person with an appreciation of American history knows that it is. And serious students of American Government know that any change in the Senate rules will have repercussions on our whole constitutional structure.

Mr. Chairman, there are two principal points I have to make in this discussion. The first deals with the effect of rules on the relation of the Executive to the legislative, particularly the relation of the Executive to the Senate.

No European state entrusts to its legislature the direct participation in executive functions which the Senate enjoys. Ours is a presidential government, with a check and balance accompanying a separation of powers. A contest for power between the Executive and legislature is inherent in the separation principle. In the shift in power through the years, the President has tended to expand in power at the expense of the legislature. Freedom of debate in the Senate has served as the most effective check on Presidential absolutism.

The prestige of the President's office and the opportunity for a constant stream of self-advertising gives the President an advantage in dealing with Congress. He does not have to face the House in open debate as does an English prime minister.

When his party is the majority party in Congress, the President's party leaders have little difficulty in passing anything in the House. With its majority cloture and gag rules, the House is largely a rubber stamp. It is no accident that the collective judgment of the Senate produces superior legislation to that passed by the House which frequently represents no more than the hasty judgment of a few party leaders.

The Senate is the only forum in the Nation that can check on executive and party propaganda. It is the only forum where a majority President can be forced to explain the meaning of proposed legislation.

It is the forum where minority criticisms can be effectively voiced and minority aspirations expressed. Alteration in rule XXII as proposed by Senate Resolution 17, Senate Resolution 21, or Senate Resolution 28 would drastically alter the relation between the President and Congress.

It would be a long step toward supplanting parliamentary government as America has known it, where legislators count as individuals and vote on legislation on its merits, by party government as it exists in European states, where legislators count but little as individuals and vote by blocs as the party leaders dictate, without incorporating the responsibility of the executive to the legislature, which is viewed as the chief advantage of the cabinet form of government.

- A change in rule XXII is far more serious than many people realize. For an excellent coverage of the significance of freedom of debate in the Senate to executive-legislation relations, I invite your attention to the Lindsay Rogers, *The American Senate, 1931*, a thoughtful study not written in a period of agitation.

The second part of my paper has to do with protection of minority rights.

The concept of majority rule is simple, but the concept of unrestrained majority rule is foreign to our written Constitution and to the spirit of American political institutions. A Federal union is not designed to enable one section to triumph over another, or the numerical

majority in the Nation to force any section to the breaking point. There are areas in which self-restraint, tolerance for the opinion of others, and compromise are to be preferred to force. Calhoun's doctrine of the concurrent majority is constantly at play in American politics. Its stronghold is the "consensus" within our political parties. It finds expression in the selection of "available" candidates for office, and in the enactment of legislation. The unanimous-consent agreement made in the Senate on January 3 of this year for handling the motion by Senator Anderson to take up for immediate consideration rules for the Senate is a clear example of the doctrine in operation.

As John Fischer has pointed out in *Unwritten Rules of American Politics*, Harper's magazine, November 1948:

Government by concurrent majority can exist only when no one power is strong enough to dominate completely, and then only when all of the contending interest groups recognize and abide by certain rules of the game.

These rules are the fundamental bond of unity in American political life. They can be summed up as a habit of extraordinary toleration, plus "equality" in the peculiar American meaning of that term. * * * Under these rules every group tacitly binds itself to tolerate the interests and opinions of every other group. It must not try to impose its views on others, nor can it press its own special interests to the point where they seriously endanger the interests of other groups or of the Nation as a whole.

Furthermore, each group must exercise its implied veto with responsibility and discretion; and in times of great emergency it must forsake its veto right altogether. It dare not be intransigent or doctrinaire. It must make every conceivable effort to compromise, relying on its veto only as a last resort. For if any player wields this weapon recklessly, the game will break up—or all the other players will turn on him in anger, suspend the rules for the time being, and maul those very interests he is trying so desperately to protect. That was what happened in 1860, when the followers of Calhoun carried his doctrine to an unbearable extreme. * * *

Now it is an unwritten but firm rule of Congress that no important bloc shall ever be voted down—under normal circumstances—on any matter which touches its own vital interests. Each of them, in other words, has a tacit right of veto on legislation in which it is primarily concerned. The ultimate expression of this right is the institution—uniquely American—of the filibuster in the Senate. Recently it has acquired a bad name among liberals because the southern conservatives have used it ruthlessly to fight off civil-rights legislation and protect white supremacy. Not so long ago, however, the filibuster was the stoutest weapon of such men as Norris and the La Follettes in defending many a progressive cause. * * *

A rule is "a prescribed guide for conduct." Rules serve their purpose best when adopted in a calm atmosphere and adhered to in moments of agitation. In a time of agitation over enactment of highly controversial legislation an appropriate time to change the rule which has enabled the Senate to serve as the balanced wheel in our whole constitutional structure?

Any change or proposed change at this time is likely to be influenced unduly by agitation on a single issue.

And I understand from Mr. Javits' remarks that that is intimately connected with this proposal in the change in the rules.

The change made in 1949 has not been well reported in the press; and few people outside the Senate realize that section 3 added to rule XXII only an express statement of a provision already implicit in the existing rule, as repeatedly affirmed by action of the Senate.

Let the Senate abide in this period of agitation by the rule of freedom of debate that has served well since the Senate was organized in 1789. States wanting FEPC and kindred legislation are free to enact

ii. Any of the so-called civil rights legislation that any State wants to enact, it can enact today.

The Federal constitutional system was designed to permit the people within each State to mind their own business within a broad range.

Extremists on both sides agitating racial problems may already have had their heyday. There is a wealth of good feeling among the American people. Education, not force, is the answer to many of our sectional problems. The road may be longer, but it is much safer.

That concludes my remarks, Mr. Chairman.

Senator TALMADGE. Any questions?

Senator JAVITS. I just wanted to thank you, Professor, for being here. I had only one question.

As you say, so many of these arguments answer each other, we don't have to introduce more questions than already exist.

I notice what you said about each State being able, if it wishes, to adopt its own law on so-called civil rights. Of course, we have in New York a great many of such laws.

But I did want to ask you, don't you think it was a different situation for the right to vote for Federal office, which is the very key-stone of this civil rights bill now on the Senate Calendar—don't you feel that when it comes to the right to vote for Federal office, the whole American people have an interest?

Mr. SAYE. Senator Javits, as I understand the proposed bill, it is an amendment to the old Ku Klux Klan Act, adding sections 4 and 5 to three sections of a bill which the United States Court, in *United States v. Harris*, declared to be unconstitutional.

If it were merely a matter of voting involved, I don't think there would be nearly so much opposition to the proposed so-called civil rights bill. I think the President asked for a moderate bill in this field. I think he has been duped. I think he has been misled by the so-called moderate measure that is now proposed.

He spoke yesterday in favor of reviving State rights; yet the bill which his leaders are bringing every pressure to get through the Congress would vastly supplant State administration of justice by a free play of the Federal judges in fields never before dreamed of by the Federal courts; and under the vaguest type of legislation, only having a suspicion of a violation of equal protection.

There is practically no definition. It is not confined to voting. If that were the situation, it would be quite a different thing.

I think perhaps Mr. Eisenhower intended a bill relating principally to voting. I don't think that would arouse a great deal of opposition.

But this other involves many things other than voting.

As a matter of fact, we don't know what it involves. It gives the judges free play and destroys the right of trial by jury.

Senator JAVITS. In other words, you think the main objection to this bill is rather the drafting.

Mr. SAYE. The generalities of the bill.

Senator JAVITS. The terms of the bill, rather than the objective of trying to get voting.

But, do you agree with me, therefore, Professor—understand, we are not trying to trap you into any answers at all. I am advising you about that, because I don't want to in any way embarrass you.

Do you agree with me, however, that the whole American people have an interest in the integrity of the voting right of the individual,

regardless of his color, in any State where he was voting for Federal office?

Mr. SAYE. Voting for Federal offices, I would agree with you.

Senator JAVITS. Thank you very much.

Senator TALMADGE. Dr. Saye, I hate to inject an extraneous issue, but since my colleague brought it up, I don't think the record ought to be left incomplete.

Is it not true that any citizen in America now has the right to vote and can enforce that right in the Federal courts, either civilly or criminally?

Mr. SAYE. I am not sure about the "civilly." I think they can sue for damages, Mr. Chairman. They are certainly exercising their right, if it is relating to the colored people in the South. It is rather amazing the rapidity with which they are registering to vote in large numbers.

I made some study recently of the registration of colored voters in the Southern States. It is a little difficult to get accurate figures in all of the States, but the increase is striking. And certainly they have the right to bring suit, if they are denied.

As a matter of fact, I don't think—I am certain in my own State of Georgia that there is no attempt to deny the right to vote to anyone for Federal or State offices on the basis of race or color.

Senator TALMADGE. Thank you very much, Dr. Saye, for your very valuable statement.

We appreciate your coming.

Mr. SAYE. Thank you, sir.

Senator TALMADGE. The next witness is Dr. Franklin Burdette, director, Bureau of Governmental Research, University of Maryland, College Park, Md.

STATEMENT OF DR. FRANKLIN L. BURDETTE, DIRECTOR, BUREAU OF GOVERNMENTAL RESEARCH, UNIVERSITY OF MARYLAND, COLLEGE PARK, MD.

Senator JAVITS. Mr. Chairman, if I may, I would like to welcome Dr. Burdette who appears on our invitation.

Senator TALMADGE. Fine. We are delighted to have him here.

Mr. BURDETTE. Thank you, Senators.

During 20 years of study of the Senate I have been convinced that freedom of debate can easily be preserved through a formula which will at the same time permit majority cloture. I think that the influence and prestige of the Senate, which are of enormous importance to the Nation and even to the world, can be enhanced by its adoption.

I cannot overemphasize the importance of full debate in the Senate. There is no other forum in which all sides of public issues can so easily be heard, no other agency which can so adequately bring both governmental action and public sentiment into revealing political sunlight, no other institution which can so effectively check executive power. These facts flow in part from the constitutional position of the Senate and from the terms and size of its membership; but they flow also in part from the political independence which free debate has given to the Senate. The absence of a rule of relevance in debate is an important part of that independence, and I should be the last to substitute a rule of relevance for broad and immediate freedom of discussion.

As a student of and writer about filibustering, I am keenly aware of the potential importance of the filibuster to force full consideration of public measures and to prevent hasty or ill-considered action. A filibuster is often undignified and in a society without conflict would never be necessary. The late Senator Theodore E. Burton of Ohio ably stated "three cases in which a filibuster is not only justifiable but salutary." The first would arise, he thought, "when a vital question of constitutional right is involved"; the second, "when the measure is evidently the result of crude or inconsiderate action"; and the third, when "because of some compulsion" a vote "will not express the honest conviction of the Members." Obviously these categories leave much to the individual consciences of Senators and are subject to abuse. If there are occasions when filibustering is justified—and certainly I can conceive such extraordinary circumstances—every proper parliamentary effort ought to be made not only to conserve for emergencies that palladium of justice and liberty but also to prevent its misuse.

Majority cloture predicated on adequate opportunity for full and free debate will not completely prevent filibusters. It will make longer ones more difficult and sometimes more tempestuous, and I believe that it will rightly require loftier and more justifiable grounds for obstruction. The art of obstruction should be a last and not a first resort. Filibustering through protracted debate is more easily defended before the public, more easily masked as discussion rather than obstruction, than are other forms of filibustering permitted by the Constitution and by the Senate rules.

Article I, section 5, paragraph 3 of the Constitution provides:

* * * and the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

I might say that the late Senator Robert L. Owen of Oklahoma advanced vigorously, although I think perhaps more ingeniously than persuasively, the view that this constitutional clause guarantees to one-fifth or more of the Members of either House the immediate right to have their views recorded on the Journal.

While that view is a historic fact, it has never been adopted in the parliamentary practice of either of the Chambers.

If a large number of germane amendments should be introduced prior to the application of cloture on any measure, the constitutional provision guarantees the possibility of extended and time-consuming voting. In 1922 Senator Oscar W. Underwood of Alabama, in denying that a filibuster was underway merely because of long debate, estimated that 8,000 rollcalls could be arranged to account for 2,000 hours or 200 10-hour days, without a word of debate. In 1917 a Republican minority forced 33 consecutive rollcall votes in a period of 5 hours, demonstrating that a fraction more than one-fifth of the Members can paralyze the Senate.

Harsh filibusters of this sort are obviously last resorts in a body of the dignity and prestige of the Senate. Yet they preclude the accusation sometimes made, in the words of Senator Hiram W. Johnson of California, that many long debates, without continuous sessions or strict enforcement of the rules, are "pink tea" or "feather duster" filibusters. In them both sides of a controversy may make political capital, generating more bitterness in the newspapers than in the Senate. There is some evidence, I think, that identification and

condemnation of these arrangements may have reduced their prevalence. At any rate, publicity about them has reinforced demands for cloture after reasonable debate.

In my view, majority cloture after full debate is a modest change for the Senate, fully consistent with real freedom of deliberation. Moreover, it should increase the influence of the Senate in our governmental system (in my judgment a highly desirable objective) if for no other reason than the greater spread of senatorial attention over a large number of governmental problems. In analyzing obstruction, we often overlook the subtle effects of threatened or potential filibusters in siphoning away the quality and quantity of senatorial influence on policy and administration. To the extent that filibustering, when it must be used at all, can be reserved for the great crises which divide America—a republic on the whole fortunately homogeneous socially and politically—the more certainly can we expect the influence of the Senate as a deliberative council to increase. These are times when there is profound need in America and in the world for that increase.

Senator TALMADGE. Any questions?

Senator JAVITS. It just occurred to me, though it is not directly related to your paper, Mr. Burdette, and I don't want to delay you at all, that the House has taken quite a kicking around in these hearings so far.

I served over there, and I found that debate was rough and tumble, but very relevant, and that men and women could disclose their views, even within the short compass of time that we had; that the right to demand an enrolled bill often resulted in a matter going over, overnight, upon the objection of only one Member; that if a Member really got very obstreperous, he would object to all kinds of unanimous consents, insisting upon punctilious reading of the Journal, and compliance with the rules, and generally raises a little havoc and kind of have a little filibuster of his own.

I wonder if you think the House really deserves the kind of airing given it in this hearing, that they rush all debate through without debating things at all?

Mr. BURDETTE. Certainly, as you point out, filibustering is possible in the House. In general, the House permits its Members to raise issues on their minds at times when the work of the House is not pressing.

In my judgment, however, the situation in the House is such that the degree of debate depends upon the attitude of the leadership. The contrary situation is true in the Senate.

As a consequence, the committees of the House have become more influential there than respectively the committees in the Senate.

The Senate still remains, I think, the body where unpopular, extraordinary, little-publicized views may be brought forth, and I think it should.

But I do not think that cloture under any plan which has been proposed by reasonable persons would limit that aspect of the Senate function.

Senator JAVITS. Would you say that specifically of Senator Douglas' Resolution 17, which permits cloture after 15 days of a constitutional majority?

Mr. BURDETTE. It should, Senator Javits. I agree. I am a little troubled perhaps about only one portion of Senator Douglas' resolu-

tion. I feel in respect to Senate Resolution 17, on page 3, line 8, that where cloture may be voted by the majority of all the Senators chosen and sworn on the 15th calendar day, exclusive of Sundays and legal holidays, there is a problem that the leadership of the Senate might adjourn the Senate under some circumstances, or might find ways of precluding debate.

I realize that whatever the unfinished business of the Senate might be within the 15-day period, any Senator—without the rule of relevance, and there is no rule of relevance in the Senate now—could speak to the subject on his mind.

I should be a little prone to suggest that there be inserted here, after the words "exclusive of Sundays and legal holidays," "and calendar days on which the Senate does not meet."

I should also say that I think that would cause a reexamination of the word "fifteen". I think perhaps I can make my point clear that I do want, as I look upon the history of free debate in the Senate, to recommend that we be certain that the Senate as an institution plans for sufficient time for all views to be presented, regardless of the position of the majority or of the leadership.

Senator JAVITS. Thank you, Professor. I think that is very constructive.

Mr. Chairman, I would also suggest, if I may, to Professor Burns and to Professor Saye that if they have any specific suggestions as to the pending bills, they be good enough to let us have them.

Senator TALMADGE. We would be happy to receive any further communication from any witness at any time, and particularly from those who have made an intensive study of this subject.

Thank you very much. We appreciate your coming, Professor.

Mr. BURDETTE. Thank you, sir.

Senator TALMADGE. Mr. Brant was scheduled as the next witness, but he will appear Friday instead.

The next and last witness for today is Mr. Irving Ferman, American Civil Liberties Union, Washington, D. C.

STATEMENT OF IRVING FERMAN, DIRECTOR, WASHINGTON, D. C., OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. FERMAN. Thank you, Mr. Chairman.

My name is Irving Ferman. I speak in behalf of the American Civil Liberties Union, as director of its Washington, D. C., office. I am also a member of the Bar of the State of Louisiana.

I think it appropriate to state that the American Civil Liberties Union has long been opposed and has expressed its opposition strongly to communism and fascism, and any other form of government that denies the basic guaranty of our Bill of Rights.

Throughout its near 40-year history, the union has been one of the stoutest defenders of the constitutional guaranties of free speech. Over this history, we have defended the free speech without distinction or compromise of persons and groups of all kinds of political disposition, some of whom have held extreme views. We are dedicated to this task in this way so that the free speech of all will be maintained and safeguarded.

For example, this year the American Civil Liberties Union criticized the issuance of the injunctive order against John Kaspar, and 10

others, by a Clinton, Tenn., judge. We felt that the order could have been construed to have enjoined free speech, which we felt in that case should have been extended even to advocacy urging disobedience of a previous order.

We have carried this concern for free speech to the floor of the United States Senate in one of its most heated political debates of this decade—the debate involving the censure of the late Senator Joseph R. McCarthy.

Whereas the American Civil Liberties Union approved certain portions of that censure, we advised against censuring Senator McCarthy on the ground that he had been contemptuous in attacking the Watkins report and the committee which wrote the report because such censure, we felt, would establish a bad precedent for free speech in the Senate of the United States.

It is because of this long devotion to and deep concern for freedom of expression that the American Civil Liberties Union has been unalterably opposed to the practice of filibustering in the Senate of the United States. Accordingly, we urge a reforming of rule XXII.

Our opposition to filibustering rests on the simple proposition that the purpose of free speech, particularly that expressing a minority view, is to help in the formulation of wise decision by majority will. Frustrating that majority will by a minority engaged in filibustering tactics cannot be condoned.

In behalf of my organization, I am proud to say that our opposition has been consistent and steadfast.

For instance, in the spring of 1953, during the opening weeks of the 83d Congress, we expressed our concern early in the debate on tidelands legislation that it not be extended to filibuster.

At that time, the late Senator Robert A. Taft took cognizance of our position by placing our statement into the Congressional Record, a copy of which, with the permission of this committee, I would like to have filed into the record of this hearing.

Senator TALMADGE. Without objection, it is so ordered.
(The statement referred to is as follows:)

[From the Congressional Record of April 22, 1953, p. 3730]

Mr. TAFT. Mr. President, I ask unanimous consent to have printed in the body of the Record a news release by the American Civil Liberties Union, attaching a letter from Patrick Murphy Malin, executive director, to the Honorable Paul H. Douglas, commenting on and regretting the fact that the Senator from Illinois should be engaged in a filibuster.

There being no objection, the release and letter were ordered to be printed in the Record, as follows:

"APRIL 22, 1953.—The Senators opposing the tidelands bill were urged today not to conduct their floor debate to the point of filibustering.

"In a letter addressed to several of the Senators leading the debate against the administration offshore-oil bill, Patrick Murphy Malin, executive director of the American Civil Liberties Union, emphasized that there is some good evidence that the opponents of the bill are not going beyond what is needed to insure adequate debate, and recording of expressions of individual opposition. However, he cautioned that public reaction justifies a hope that even the appearance of filibustering will be avoided.

"Malin, in his letter, reaffirmed the ACLU's position on filibustering as follows: "Democratic action means decision by the majority after thorough discussion of all points of view. Our Constitution is gloriously emphatic in its protection of individuals and minority groups, and of even the smallest sovereign State in our Federal Union. The American Civil Liberties Union is constantly engaged in supporting those protections. But we believe there are enough of them without the Senate filibuster."

"Dictatorships act quickly and tyrannically. Democracies—to preserve their nature—must act relatively slowly, after mature deliberation. But their legislatures must act in foreign and domestic policy; and there was never a time in history when their ability to act was more crucial than it is today. The Senate is under the compulsion of the time in which we live to act now to make itself free to decide for or against vital legislative proposals. Our democracy cannot afford indefinite postponement of decision. The purpose of free speech is to aid decision—for or against, right or wrong—not to prevent decision. Decision by filibuster is analogous to decision by dictatorship. It is the tyrannical decision by a minority over a majority."

"AMERICAN CIVIL LIBERTIES UNION,
New York, N. Y., April 21, 1953.

"HON. PAUL H. DOUGLAS,
United States Senate,
Washington, D. C.

"MY DEAR SENATOR: In my testimony on behalf of the American Civil Liberties Union on October 2, 1951, before a subcommittee of the Senate Committee on Rules and Administration during hearings on four resolutions dealing with cloture, I said in part:

"The four resolutions * * * all aim * * * to improve on the present solution of the age-old problem of democracy: How to balance the need for full debate and the need for prompt action. * * * Our interest in this problem of cloture goes to the root of the matter, and is not confined to an effort to eliminate obstruction to any particular legislative proposal. * * *

"Democratic action means decision by the majority after thorough discussion of all points of view. Our Constitution is gloriously emphatic in its protection of individuals and minority groups, and of even the smallest sovereign State in our Federal Union. The American Civil Liberties Union is constantly engaged in supporting those protections. But we believe there are enough of them without the Senate filibuster.

"Dictatorships act quickly and tyrannically. Democracies—to preserve their nature—must act relatively slowly, after mature deliberation. But their legislatures must act in foreign and domestic policy; and there was never a time in history when their ability to act was more crucial than it is today. The Senate is under the compulsion of the time in which we live to act now to make itself free to decide for or against vital legislative proposals. Our democracy cannot afford indefinite postponement of decision. The purpose of free speech is to aid decision—for or against, right or wrong—not to prevent decision. Decision by filibuster is analogous to decision by dictatorship. It is the tyrannical decision by a minority over a majority."

"We write now with respect to the present debate on the offshore-bill, though of course not taking any position on the merits of the bill itself. Without detailed examination of the record, we cannot judge the question of whether there has been what we would regard as adequate debate on facts and ideas; and there is some good evidence that the opponents of the bill are not going beyond what is needed to record their individual opposition, or introducing irrelevant material. But certain public reactions give us enough cause for concern so that we must express our earnest hope that even the appearance of filibustering will be avoided—for the sake of the considerations outlined in the above excerpts from my 1951 testimony, for the sake of other legislation on which prompt action has been or will be threatened by filibuster, and for the sake of the leadership which opponents of this bill have so long demonstrated in applying all the principles of the American rule of law.

"Sincerely yours,

"PATRICK MURPHY MALIN,
Executive Director."

Mr. DOUGLAS. Mr. President, the Senator from Ohio has been courteous in this matter. He did not place the letter in the Record until he had consulted with me and found that I had received it. The Senator from Ohio has acted the part of a gentlemen throughout this whole affair, in thorough keeping with his good character and reputation.

However, I wish to point out that we who are opposing the joint resolution are not engaged in a filibuster. [Laughter.] It is very important that we keep in mind the fundamental characteristics of a filibuster. A filibuster is a prolonged discussion intended to prevent a vote. There is no such desire on the part

of those who are opposing the pending measure. We want this measure to be brought to a vote. We would have been perfectly willing to accept the proposal of the Senator from Ohio that the initial motion should have come tonight at 7:30. We would have been willing to have it come tomorrow night, or the night after. But the Senator from Ohio has now given us a great deal of time. Time will be almost running out of our ears, so to speak. But we did not request this time.

What we are trying to do is not to prevent a vote, but to enable the vote, when it comes, to be more intelligent, because we have spent much time in preparing for this discussion. For 7 years, really for 8 years, a campaign of misinterpretation has been carried on throughout the country. I will not say it was intentional misinterpretation; I think it has been unintentional. The press of the country, with some exceptions, such as the St. Louis Post-Dispatch, has been indifferent to the issues at stake. So it has been necessary for the opponents of the Holland joint resolution to educate not merely Senators, but also the press and the public. All this takes time.

The Senator from Ohio really should have been listening to the debate a little more thoroughly than he has been. Last Saturday he expressed the opinion that no new points would be developed during the course of the debate. As will be remembered, the distinguished senior Senator from Tennessee [Mr. Kefauver] took the floor and spoke for 2 days, bringing out a new point, namely the effect of the Holland joint resolution upon the fishing industry of the United States. Yesterday the distinguished junior Senator from Arkansas [Mr. Fulbright] took the floor and made a very able speech on education.

Today the junior Senator from Minnesota [Mr. Humphrey] has developed some extremely interesting points. For instance, he brought out that the constitutional convention considered the equal-footing clause; rejected proposals that States admitted beyond the Alleghenies should be brought into the Union on inferior terms; and virtually laid down the equal-footing provision which is involved in the Texas and Florida cases.

The Senator from Minnesota also pointed out extremely interesting cases in the early history of the United States with respect to the control of the Federal Government over the marginal sea.

So the debate has been germane, and we shall keep it that way. There will be no recipes for pot likker introduced on the floor. No extraneous materials will be introduced. We shall argue the issues. We shall welcome courteous participation on the part of our opponents, instead of frozen silence.

I say to my good friend, the Senator from Ohio, who has done me the honor of including in the Record a letter from the American Civil Liberties Union, that this is not a filibuster; this is an attempt to educate the American public, the American press, and, through them, the United States Senate.

Mr. TAFT. Mr. President, I only wish to say that I am greatly encouraged by the Senator's statement that he does not intend to prevent a vote. Tomorrow I shall renew my efforts to set some day, on which I hope the Senator will be prepared to agree, when the vote may take place.

Otherwise, all I have to say is that I know a filibuster when I see one.

Now, Mr. President, I move that the Senate take a recess—

Mr. DOUGLAS. Will the Senator withhold the motion?

Mr. TAFT. I yield to the Senator.

Mr. DOUGLAS. Mr. President, I wish to thank the Senator from Ohio for yielding to me to make clear that this is not a filibuster, and that this will not be considered as a speech in my time. I thank the Senator for yielding to me in this fashion. I hope my statement will establish a parliamentary record of the fact that this does not constitute a speech in my time on the pending question.

Mr. FERMAN. We likewise expressed ourselves on the extended debate on the Atomic Energy Act of 1954 during the closing days of the 84th Congress.

The history and experience of the present rule XXII indicates the ineffectiveness of a cloture rule based upon a vote of two-thirds of the Senate duly chosen and sworn.

Therefore, we support Senate Resolution 17 introduced by Senator Paul H. Douglas. Its basis for cloture in a two-thirds vote of those Senators present and voting, after which debate would be limited to one hour per Senator for 15 days following the introduction of a

cloture petition would lay the basis, we feel, for sound decision after full deliberation of all views.

We favor Senator Douglas' resolution over Senator Johnson's Senate Resolution 30 because of its provision repealing section 3 of the present rule XXII.

We feel that section 3, barring the application of cloture to debate on a change of rules, is in violation of article 1, section 5, providing that each House may determine the rules of its proceeding.

We are in accord with Vice President Richard M. Nixon's views expressed in the Senate on January 4 of this year:

Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional. It is also the opinion of the Chair that section 3 of rule 22 in practice has such an effect.

I respectfully urge this committee to recommend passage of Senate Resolution 17, so that we can preserve the legislative power of our Senate. In this way, we can protect our cherished institutions which rest on the ideals of the first amendment.

Senator TALMADGE. Any questions?

Senator JAVITS. No.

Senator TALMADGE. Thank you very much for coming.

Any other witnesses who desire to be heard today?

If not, this concludes today's session. We will meet on Friday morning at 10 a. m. in this same room.

(Communications from Association of Citizens' Councils of South Carolina; Pride of Malaska Council, No. 100, Sons and Daughters of Liberty, Phillipsburg, N. J.; and Pride of New Jersey Council, No. 243, Sons and Daughters of Liberty, Woodbridge, N. J., were received by the subcommittee for inclusion in the record, and may be found in the appendix, in exhibit 2.)

(Whereupon, at 12 noon, the subcommittee recessed, to reconvene at 10 a. m., Friday, June 28, 1957.)

PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE

FRIDAY, JUNE 28, 1957

UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:05 a. m., in room 155, Senate Office Building, Senator Herman E. Talmadge (chairman of the subcommittee) presiding.

Present: Senators Talmadge (presiding), and Javits.

Also present: Senator A. Willis Robertson, Gordon F. Harrison, chief clerk and counsel, Committee on Rules and Administration; Langdon West, special counsel to the subcommittee; Robert S. McCain, professional staff member; and Sidney Kelly, Jr., administrative assistant to Senator Javits.

Senator TALMADGE. The subcommittee will come to order.

We have two communications from Senators for insertion in the record at this time: A letter from Senator Hennings and a statement from Senator Potter. Following Senator Hennings' letter, I wish to insert my reply thereto.

(The documents referred to are as follows:)

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
June 24, 1957.

HON. HERMAN E. TALMADGE,
*United States Senate,
Washington, D. C.*

DEAR HERMAN: There has been brought to my attention the attached pamphlet by Austin F. Hancock, a witness who appeared pursuant to your request before your Special Subcommittee on Rule XXII. I feel certain that you are probably unaware of the fact that it had been distributed.

I believe you will agree that the contents of the pamphlet include inaccuracies and intemperate opinions which form no part of the thinking of any Member of the Senate. Even if that were not the case, you and I and the other members of the committee will still highly disapprove of any pamphlet presented by a witness before a Senate subcommittee assuming the appearance of an official publication.

The attached pamphlet, on its face, carries in large type the words "United States Senate" and, in addition, the name and membership listing of the Committee on Rules and Administration. Whether it was so intended or not, this type of labelling could readily create a serious false impression that the Committee on Rules and Administration in some manner, however remote, officially sanctioned the above brochure. As chairman of the committee, I can unequivocally state that such is not the case.

I would appreciate this letter being made part of the record of the proceedings before the Special Subcommittee on Rule XXII, and I know you and Senator Javits and the staff of the subcommittee will cooperate to the extent possible to

avoid the recurrence of such an unfortunate incident, which might reflect adversely upon all of us.

Sincerely yours,

THOMAS G. HENNINGS, Jr.

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,

June 27, 1957.

HON. THOMAS G. HENNINGS, Jr.,

Chairman, Committee on Rules and Administration,

United States Senate, Washington, D. C.

DEAR TOM: Thank you for your letter of June 24 calling to my attention the pamphlet distributed by Mr. Hancock, who appeared before the Special Subcommittee on Rule XXII.

Please be assured that I was not aware of its distribution and that I do not concur in either its style of presentation or content. I agree fully with your position that any impression that such literature would be sanctioned by the Committee on Rules and Administration must be dispelled.

Your letter will be made a part of the record of the proceedings of the special subcommittee at its next hearing date, Friday, June 28.

You may be further assured that I shall take every precaution to see that there is no further abuse of the privilege of testifying before the special subcommittee on the part of any witness.

With every good wishes, I am

Sincerely,

HERMAN E. TALMADGE.

STATEMENT OF HON. CHARLES E. POTTER, A UNITED STATES SENATOR FROM THE
STATE OF MICHIGAN

I am gratified that this special subcommittee is currently studying proposed changes in rule XXII of the Senate. Rule XXII should have been changed long ago, but its prompt revision now is most urgent and timely in view of the recent action of the Senate in placing House-passed civil rights legislation on the Senate calendar. By so doing, a substantial majority of the Members of the Senate not only made clear their desire to have the right to vote on this legislation, and not have it strangled in committee, but, in my judgment, they also clearly and forcefully indicated their vigorous approval of the legislation. Unless rule XXII is changed, the pending civil rights measure is in serious jeopardy—it threatens to be filibustered to death by a small minority thus vitiating the will of a substantial majority.

Rule XXII in its present form is not a positive procedural method of conducting Senate business; it is a substantive means of preventing the majority of the Senate and of the people from determining vital substantive issues.

Adequate debate on the merits of all legislation must always be permitted in the interest of sound and wise legislation and to insure complete protection of the rights of all minorities. But, unfortunately, rule XXII has been employed on too many occasions to accomplish a purpose for which it was not designed nor intended. A rule that allows a small minority to thwart the will of the Senate, so that a vote may not be taken, destroys the very concept of our republican form of government.

I would oppose with all my might any measure that sought to curtail adequate debate, but the contention that a reasonable limitation on debate poses a threat to minorities is specious and in my opinion utter nonsense.

The critical times in which we live demand that our rules provide for efficiency in legislating. Interminable debate in too many cases has seriously impaired the efficiency of the Senate. Aside from the damaging effect rule XXII can have on the pending civil rights legislation, the rule stands as a constant and continuing threat that might be invoked in time of grave international crises when the very security of our Nation is immediately imperiled and reasonably swift legislative action is imperative.

Opponents of civil rights legislation have endeavored to becloud the major issue involved, specifically, shall a majority of the Senate have the right to vote on legislation after reasonable and adequate debate. This has been done with specious and self-serving questions as to whether or not the Senate has a right

to change its rules and with spurious charges that reasonable limitation of debate will impinge upon the rights of minorities.

Majority rule, with adequate safeguards for minorities, is the basic principle of legislative action prescribed by our Constitution. The authors of the Constitution prescribed majority rule as the rule for congressional action by expressly enumerating all the instances in which more than a simple majority vote was to be required. A revision of congressional rules was not enumerated as requiring a two-thirds majority. I am sure that if the framers of the Constitution with their gift for clarity of expression had so intended, it would have been made crystal clear. But such was not the case. They clearly spelled out the exceptions to the rule so that there could be no possible misunderstanding as to the rule itself.

I respectfully urge the committee to promptly recommend legislation that will revise rule XXII, and permit a vote to be taken on the proposal after ample debate. The Senate, as the greatest deliberative body in the world, cannot endure as such and perform its constitutional responsibilities of representing all the people in our Nation under the ever-present threat of filibuster. It is a roadblock to progress and achievement that must be removed.

Senator TALMADGE. Are there any Senators present to testify at this time? If not, we will proceed with the testimony of Mr. Walter P. Reuther, president of the United Automobile Workers.

Proceed, if you will, Mr. Reuther. We are happy to have you with us.

STATEMENT OF WALTER P. REUTHER, PRESIDENT, UNITED AUTOMOBILE WORKERS (AFL-CIO)

Mr. REUTHER. Thank you, Senator.

Mr. name is Walter P. Reuther and I am president of the United Automobile Workers, a labor organization representing approximately 1½ million members in the automotive, the aircraft, and the agricultural implement industries.

I should like first of all to express my sincere appreciation for this opportunity of appearing before your committee, and I would like to submit for the record a prepared statement. Then I would like to elaborate on it orally, if I might.

Senator TALMADGE. We would be happy to have you do so.

Mr. REUTHER. Thank you.

(The statement referred to is as follows:)

STATEMENT IN SUPPORT OF MAJORITY RULE BY WALTER P. REUTHER, PRESIDENT OF UNITED AUTOMOBILE WORKERS (AFL-CIO)

We are particularly pleased at this opportunity to testify before your special subcommittee in support of majority rule in the Senate of the United States both because our union has had a long and continuing interest in this subject and because of its vital significance to our way of life. We in the UAW firmly believe that rule XXII is the No. 1 legislative roadblock to a more democratic America and that only by rewriting this rule to permit majority cloture after full and fair debate can we achieve the goal of freedom, equality, and abundance for all.

As far back as 1851, I had the privilege, on behalf of our union, to present to this same committee a carefully documented brief prepared by our Washington counsel and our national legislative representative in support of the proposition that rule XXII of the Senate violates the Constitution of the United States. This brief and my testimony at that time have been credited by Senator Russell and others with originating the proposition that the Senate of each new Congress has the right to determine its own rules unfettered by the dead hand of the past and that rule XXII could be rewritten at the opening of the Senate of any new Congress whenever 49 Senators made up their minds to do so. We would indeed be gratified if we could accept this "Oscar" from Senator Russell.

But, fortunately or unfortunately, Senator Tom Walsh of Montana made this proposal before I was out of knee pants and our role in the UAW was simply to call to the Senate's attention what Senator Walsh had said and done many years before.

One thing I will admit, however, is that we have never lacked for interest in bringing about majority rule in the Senate. Day after day, month after month, year after year since our brief and testimony in 1951, the UAW has tried to keep the issue of rule XXII before the people. At our last convention, held in Atlantic City in April, we adopted this resolution:

"This convention of the UAW commends the courageous efforts of the bipartisan committee of Senators who led the gallant fight for a change in Senate rule XXII at the opening of the 85th Congress.

"We pledge our continued support to this bipartisan group of Senators in their unrelenting efforts to establish majority rule in the Senate of the United States. We will intensify our campaign to persuade or elect Senators who will join in the campaign to end filibuster rule by changing rule XXII to provide for majority rule in the United States Senate."

Support for majority rule comes not from our union alone. The labor movement is firmly committed to this principle. At the founding convention of the American Federation of Labor and Congress of Industrial Organizations a resolution was unanimously adopted which provides in relevant part as follows:

"As an essential preliminary to the enactment of civil-rights legislation * * * we urge that the rules be so amended that the will of the Congress may not be stultified by a recalcitrant minority. Rule XXII should be changed to permit a majority of Senators present and voting to limit and close debate."

I

We believe that rule XXII betrays the fundamental principle of majority rule inherent in democratic government and imbedded in our Constitution. Having just said this, it gives me somewhat of a start to realize that in the year 1967 so obvious a thing even had to be stated. For if there is one proposition that should be accepted by all who assert their devotion to democratic principles and to the Constitution of the United States, it is that our Government was founded upon the principle of majority rule and that rule XXII, which permits a minority of Senators to prevent the majority from acting, contravenes that basic principle, and is therefore unconstitutional.

The Constitution established majority rule as the basic principle of our Government. Those who attended the Constitutional Convention had seen the impotence of the Government acting under the Articles of Confederation, which required a two-thirds vote of the States on all important matters (Articles of Confederation, art. IX, art. X). Having seen what minority rule could do, the Constitutional Convention governed itself by majority rule and continuously made clear its devotion to that principle. Alexander Hamilton, writing in *The Federalist*, No. 22, spoke for the Convention when he said:

"The public business must, in some way or another, go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good. And yet, in such a system, it is even happy when such compromises can take place; for upon some occasions things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savor of weakness, sometimes border upon anarchy."

The authors of the Constitution demonstrated their belief in majority rule by expressly enumerating all the instances in which more than a majority vote was to be required. These exceptional cases were limited to five. There are two-thirds requirements in connection with (1) the impeachment power, (2) the expulsion of Members of Congress, (3) the power of Congress to override the veto, (4) senatorial ratification of treaties, and (5) the initiation by Congress of proposals to amend the Constitution. In these rare instances, where it was deemed necessary to make exceptions to majority rule, the Constitution expressly said so (art. I, sec. 3; art I, sec. 5; art I, sec 7; art II, sec. 2; art V).

This detailed specification of the two-thirds requirement in connection with particular powers demonstrates that, when Congress was to operate other than

by majority rule. It was so informed by definite language in the Constitution. When a document, as carefully drafted and considered as was the Constitution, enumerates particular exceptions to a general rule, it must be concluded that no other exceptions were intended to be made. As the Supreme Court said in *Addison v. Holly Hill Co.*, (322 U. S. 607 at 617): "Exemptions made in such detail preclude their enlargement by implication." Rule XXII, by permitting a small minority to block action by the majority, nullifies this careful structure created by the Constitution.

The Founding Fathers gave further evidence of their intent that majority rule should govern in all except the five specified instances by the great care with which they limited the two-thirds requirement. At least two separate instances are recorded in which the Convention rejected efforts to impose a two-thirds requirement on legislation:

(1) On August 29, a motion to limit the national power over interstate and foreign commerce by a two-thirds provision was made and rejected. Mr. Sherman, in arguing against the motion, stated that "to require more than a majority to decide a question was always embarrassing, as had been experienced in cases requiring the votes of 9 States in Congress" (referring to the Congress under the Articles of Confederation).

(2) On September 15, in the busy closing days of the Convention, another attempt to fetter Congress' control over navigation by a two-thirds limitation was unsuccessful (Farrand, *Records of the Federal Convention of 1787*).

In addition to the rejected attempts that were made to limit the majority principle in connection with substantive powers, the motion in the Constitutional Convention to raise the quorum provision (art. I, sec. 5) from a majority to two-thirds was overwhelmingly put down. Some members of the Convention even feared that a majority was too large a number. George Morris pointed out that "the secession of a small number" might "in the national councils . . . be fatal," and this fear of his was concurred in by a number of others who spoke on the subject (Prescott, *Drafting the Federal Constitution*, p. 425 et seq.).

Accordingly, the Congress was given power to compel the attendance of absent members so that a majority could be gathered together and the business of the Congress dispatched.

Actually, of course, all this evidence of the intention of the founders of our Government concerning majority rule is simply further proof of something we all knew anyway. In a very real sense, the essence of democracy is majority rule with guarantees for individual rights. No Government worthy of being called a democracy can be predicated on any principle other than majority rule.

Equally clearly, rule XXII prevents the operation of majority rule. Indeed, I do not believe that those who support rule XXII today really challenge this fact. Rule XXII, by giving a minority of Senators the power to prevent action by the majority, negates the very principle of majority rule upon which our constitutional democratic government is based.

There is no issue here of full and fair debate. Everybody in the United States other than a few would-be Communist dictators and a few right-wing totalitarians favors full and fair debate on all issues. We would oppose most strongly giving the majority the right to cut off debate before the issues have been fully explored. We would favor 2 weeks of debate before any action could be taken by the majority to cut off debate. But some time there must be a right to vote. Certainly the right to vote in the Senate ought to have as much dignity as the right to talk.

Actually, the Senate can get its debating done quite quickly when it is so inclined. On January 3, 1957, Senator Anderson made a motion to take up the rules of the Senate of the 85th Congress. The majority and minority leaders of the Senate obtained a unanimous-consent agreement allowing only 6 hours of debate before the vote on the Anderson motion. As the result of the action of the leadership, concurred in by the Senate, the issue of majority-versus-minority rule in the Senate of the United States and the fundamental nature of the Senate as a continuous or discontinuous body was debated in 6 hours and a vote taken. If such basic questions could be adequately debated in 6 hours—or so the majority and minority leaders seemed to feel—certainly other issues could be fully debated in 6 days or at least 6 weeks. Yet the supporters of rule XXII want to keep the present rule in effect whereby 6 weeks, or even 6 months, of debate is not enough. Debate must go on until those in the majority finally give up and their proposals are defeated by inaction.

But rule XXII does not just defeat a few civil rights bills opposed by a few southern Senators; it affects the entire operations of the Senate. I cannot put

this proposition better than to quote the language of Senator Anderson of New Mexico, who has twice now led the fight for a better rule XXII at the opening of the 83d and 85th Congresses. On January 18, 1954, Senator Anderson stated:

"I am not suggesting that the filibuster is the regular order of the day on this floor. * * * It does not have to be. * * * However infrequently the hammer on the filibuster gun is drawn back and cocked, this veto power of the minority over the will of the majority is, as all of us well know, a factor never overlooked in legislative drafting, appropriations, strategy, and tactics in the Senate of the United States. * * * It affects and conditions every piece of legislation from the time it is a twinkle in the eye of its parent through every stage of gestation and birth."

The result is that, except for great dramatic national crises, such as the bank closings of 1933, the Nazi conquest of France in May 1940, the attack on Pearl Harbor, December 7, 1941, and the Communist attack on North Korea, June 24, 1950, the Senate and therefore the Congress of which it is an equal part are too often too late with too little to meet the rapidly developing problems, needs and opportunities of an age of atomic energy, automation, and a Communist expansionism that is bent upon and has repeatedly announced its intent to take over the entire world.

We can ill afford continued minority rule. National welfare, strength, security, and survival require the establishment of majority rule.

In the past 6 years since a subcommittee of the Senate Rules Committee conducted extensive hearings on rule XXII—in the course of which the present rule XXII was first denounced as unconstitutional—great progress has been made. The American people have a better understanding of the fact that, at the very core and heart of our Federal Government, majority rule is denied, frustrated, blocked and defeated by entrenched minority rule.

Much too much has been said and much too little has been done about changing rule XXII. The arguments for majority rule are clear; that rule XXII prevents majority rule is equally clear. The only real question is: What is going to be done about rule XXII?

II

Although action by the Senate of the 85th Congress to make any substantial improvement in rule XXII is likely to be blocked by the veto power of a filibustering minority, we nevertheless urge that a test be made to determine whether rule XXII can be changed for the better during the life of a Congress.

We support Senate Resolution 17, introduced by Senators Douglas, Ives, and 12 others, which offers a close approach to majority rule by providing that filibusters may be broken after 15 calendar days by vote of a majority of the Senators "duly chosen and sworn."

Senate Resolution 17 also repeals the unconstitutional section 3 of the present rule XXII which attempts to fasten rule XXII upon the Senate to the end of time. That section attempted to legislate for eternity by providing that there shall be no limitation of debate on a motion to proceed to the consideration of a change in rule XXII or any other rule of the Senate.

We oppose Senate Resolution 30, sponsored by the majority and minority leaders, for two reasons:

1. Its proposed lowering of the hurdle from 64 to two-thirds of those present and voting will amount to little or no reduction in the number of Senators who must be present and voting for cloture in order to break filibusters against such highly charged issues as the minimum civil-rights bill scheduled for floor debate the week of July 8, 1957.

The total vote last January 4 on the Anderson motion to adopt Senate rules (that is, to change rule XXII) was 93—38 for, 55 against. Two-thirds of 93 is 62. The same attendance for a rollcall on a motion to limit debate on a civil-rights bill would mean that 62 Senators would have to vote for cloture in order to break a filibuster. The strain and sweat of the fight to change rule XXII should yield better results than an uncertain gain of 2 votes that, with attendance of all 96 Senators, would shrink to no gain at all.

2. Section 8 of Senate Resolution 30, intentionally or otherwise, would, if adopted, put the Senate on record in an attempt to cancel Vice President Nixon's opinion, given to the Senate January 4, 1957, that section 3 of the present rule XXII is unconstitutional.

In saying that old rules shall continue until new rules are adopted, Senate Resolution 30's section 8 attempts to deprive the Senate of each new Congress, including the newly elected or reelected Senators, of their constitutional right to make rules for the conduct of the Senate's business.

In our opinion, section 3 of Senate Resolution 30 is unconstitutional for the same reason that section 3 of rule XXII is unconstitutional, namely, because it attempts to subject the Senate of the present and all future Congresses to rule by the dead hand of the Senate of the 81st Congress, as it operated in adopting the Wherry-Hayden rule XXII on March 17, 1949. Ironically, the majority in the vote of 63 to 23 to adopt rule XXII was 1 vote less than the hurdle of 64 votes which it attempted to erect for all time to come.

But whatever happens in the 85th Congress, the fight will go on until actual majority rule is obtained. We were most encouraged by what happened at the opening of this Congress. Forty-one Senators are now on record in support of the proposition that the Senate of each new Congress has the right on opening day to take up its own rules and determine them for itself unfettered by the action of the Senate of previous Congresses. This compares with only 21 Senators who took this same position 4 years earlier. Furthermore, we now have the explicit ruling of Vice President Nixon, consistent with the earlier implicit position of Vice President Barkley, upholding "the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules." We are confident that, at the opening of the 86th Congress in 1959, there will be a majority for this proposition and the principle will be established once and for all that the Senate of each succeeding Congress can and must adopt its own rules as does the House of Representatives. It will only take a switch of 7 votes to accomplish this result, much less than the switch between 1953 and 1957. With the Vice President supporting this position and with the increasing public awareness of the damaging effects of the filibuster, we believe this fight can and will be won in 1959. If it is not won in 1959, it will be won in 1961 or 1963 or however long it takes. The continuing fight for majority rule is one that can end only in success.

III

While these hearings are on the procedural matter of Senate rules, it is obviously unrealistic and impossible to confine them to the vacuum of procedure. We cannot exclude the great human reason for replacing the present veto power of a filibustering minority with majority rule.

Reality was let into the hearings early when witnesses opposed to any change in rule XXII announced in the same breath their opposition to civil-rights legislation. This was the position taken quite honestly and candidly by, for example, Mr. Tyre Taylor, general counsel of the Southern States Industrial Council.

I understand that witnesses have been asked to give the name of any Negro who has been denied a job because of his race or color. I hope that members of the committee will assemble the easily available factual information showing that every day millions of Negroes and members of other minority groups are discriminated against in employment opportunities and in upgrading and promotion because of their race, religion, color, national origin or ancestry.

Apparently it is again necessary to document the obvious, the daily tragedy and shame of our Nation that in the eyes of the world mock our preachments about democracy and human brotherhood and the dignity of man. I would refer those who seek such documentation to the Federal Committee on Contract Compliance, of which Vice President Nixon is chairman, and which can produce facts, places, and dates about such discrimination.

Let them read the hearings of the Committee on Constitutional Rights of the Senate Judiciary Committee, held earlier this year, the House Judiciary Committee hearings of this year and of July 1955, and repeated hearings by the Senate Labor and Public Welfare Committee on the Humphrey-Ives bill for an effective Federal FEPC, going back to 1947.

Let them give particular attention to a 1952 Senate Labor and Public Welfare Committee Report on Employment and Economic Status of Negroes in the United States showing that nonwhite workers' family income averaged approximately half of that of white workers' families and that, because they are paid less, eat less, wear less and pay more for worse housing than white workers; nonwhite workers at age 20 can expect to die several years earlier than white workers. It would be interesting to have the Bureau of Labor Statistics bring its 1950 tables on working life up to date. We urge the committee to obtain these figures.

IV

It is a notorious fact, which is becoming better known to the American people day by day, that we are not governed by majority rule but by minority rule;

that the lever of power used for minority rule is the filibuster; that the filibuster is legalized in the Senate of succeeding Congresses by acquiescence in the unconstitutional rule XXII; that rule XXII is, in New York Times Commentator Arthur Krock's accurate phrase, the gravedigger in the Senate which is the graveyard of civil-rights pledges and civil-rights legislation.

It is inevitable that the foolhardy attempt of March 17, 1949, to "nail the Senate's feet to the floor for a thousand years" is going to be undone and corrected sooner or later—and not much later. We have 7 Senate votes to go; 7 Senators must be persuaded or elected to support the ending of rule by filibuster and to vote for the substitution of majority rule.

We urge your committee and the liberals in both parties to do their utmost to hasten the day when the Senate can adopt its own "Emancipation Proclamation" in the form of a new rule XXII that will permit the limitation of debate by the vote of a majority of those present and voting after a quorum call.

Mr. REUTHER. I appear here this morning in support of the establishment of majority rule in the proceedings of the United States Senate. We believe that the abolition of rule XXII is the most essential single step that the United States Senate should take in order to establish majority rule in its deliberations and in order to remove the more serious legislative roadblock that we think is impeding the passage of essential legislation as it relates to the achievements of the great promise and the great potential that American democracy offers.

We believe that the record of the United States Senate will show conclusively that rule XXII, which enables a minority to block the will of the majority, does represent the most serious threat to the proper functioning of the democratic process in the United States Senate.

We believe that a change is long overdue and that the Senate ought to take action at the earliest possible date to replace minority rule by procedures that will establish majority rule.

Now, the Automobile Workers Union has been concerned about this matter for some time. In 1951 I had the privilege of appearing before a subcommittee of the United States Senate, at which time these same questions were under discussion. Our union at that time filed a very comprehensive brief with the Senate subcommittee in which we dealt with the broad constitutional aspects of rule XXII.

We helped finance a very careful research into the constitutional background—what the Founding Fathers had in mind when they wrote the Constitution. There is no question about it that that research has demonstrated very conclusively that the Founding Fathers intended that the United States Senate would base its operation upon the principle of majority rule.

In that brief we showed that it was the intent of the Founding Fathers that when the United States Senate of each Congress convened and organized itself following each national election, a majority of Senators under the Constitution had the power and the authority and the responsibility for the establishment of the rules of procedure that would govern that session of the Senate. We showed that the concept of the Senate as a continuing body and the notion that an earlier Senate automatically binds future Senates do not reflect the intent of the people who wrote the Constitution.

Now, we have been given credit for having come up with this idea, but I would like to state, that while we did help, I think, refine this idea, we did not originate it. This idea that 49 Senators or a majority had the power at the beginning of each new session of the Senate to

write their own rules of procedure was an idea that was expressed by Senator Thomas Walsh, of Montana, many years ago, before UAW was ever conceived, when I was still in knee breeches, so that, while we have refined this idea, perhaps did more basic constitutional research than any other group, we did not originate the idea. It was originated and certainly presented much before we had come up with the idea.

Now, the positions that I wish to present to you this morning are not a matter of my personal attitude. They happen to be the position of the membership of my union, adopted in convention. I would like to put in the record, if I might, a copy of the resolution adopted between the period of April 7 and 12, 1957, by the more than 3,000 delegates participating in the last constitutional convention of the UAW.

Senator TALMADGE. Without objection, it is so ordered.

(The relevant portion of the resolution referred to is as follows:)

As an essential preliminary to the enactment of civil rights legislation, * * * we urge that the rules be so amended that the will of the Congress may not be stultified by a recalcitrant minority. Rule XXII should be changed to permit a majority of Senators present and voting to limit and close debate.

Mr. REUTHER. Now, at this convention, Mr. Chairman, we discussed many problems and I think the record of our convention will show that there was considerable debate and discussion as it related to the question of rule XXII, as it related to the broad question of civil rights and civil liberties, and after this discussion, this resolution was adopted by the unanimous action of the more than 3,000 delegates.

Similar action was taken by the last constitutional convention of the American Federation of Labor and Congress of Industrial Organizations representing roughly 15 million organized workers throughout America. They, too, are on record in opposition to rule XXII. They are in favor of replacing minority rule with majority rule in the United States Senate.

Now, it seems to me that we ought to discuss this question of majority rule and not get confused about such questions as: Is the majority attempting to deny the minority the right to full and democratic expression? This is not involved here. I would be unalterably opposed to any efforts to try to take away the right of full and free debate in the Halls of Congress, in any other aspect of American life.

But I think we need to understand clearly that debate in itself is not the end product of the democratic processes, that debate is a means to an end and that the end product must be democratic legislative action, and when debate is used unlimited in an effort to block the right of the majority to act, then that is an abuse of the democratic privilege of full debate.

In our own organization we have what we think to be one of the most democratic organizations in America. We enable the minority to debate every issue. Our rules of procedure provide that if there is a minority and majority report on any matter coming before the convention, there is equal time allocated to both the minority and the majority points of view and the proceedings of our last convention demonstrate very clearly that time after time, as chairman of that convention, I with great effort tried to find people who may have shared a minority point of view in order to provide them the opportunity of taking the floor and expressing their minority point of view.

But when the minority and the majority both have exercised the right of full and free debate, it is then the moral responsibility for the majority to act, because debate without action is debate without purpose.

Now, what is the purpose of free debate? The purpose of free debate between free men, whether it be in the halls of the United States Senate, whether it be in a trade-union congress, whether it be in any other organization of free men, the purpose of debate is to explore the facts. It is to sharpen people's point of view so that greater understanding of the problem can reflect itself in a more rational and intelligent decision. That is the purpose of free and unlimited debate.

The purpose of free and unlimited debate is to expedite the democratic processes, to make them more responsible, to make them more intelligent; it is not the purpose of free debate to block the will of the majority from translating its will into practical legislative action and legislative decision.

And so we believe—and we believe this sincerely, not as trade unionists, but as just free men and women who live in this great and wonderful democratic country of America—that when the abuse of unlimited debate by a minority is willfully and consciously and deliberately used as a technique by which to block the will and the ability of the majority to act, through the technique of a filibuster, that such an abuse of the unlimited right to debate is undemocratic, is un-American, and is essentially immoral; when one small group of people in a free society abuse the right to go on talking forever, not because they want to try to convince the other fellow that the merits of their position are superior to the merits of the other fellow's position, not because they want to put on the record essential facts upon which the decision ultimately should be made, but when the right of unlimited debate is abused merely as a technique to prevent the majority from acting, then that is an abuse of the democratic privilege and should not be tolerated. It should not be tolerated in our opinion, Mr. Chairman, because it violates the essential elements of what constitutes rational and sensible procedures that ought to govern the conduct of anyone participating within the framework of a free society, whether it be in the United States Senate or any place else.

That is why we believe that rule XXII betrays the fundamental democratic principles of majority rule. And I think that this question of majority rule is perhaps more important today than at any other period of American history.

We are in a life and death struggle with the forces, the ugly, evil, immoral forces of Communist tyranny. This means that America takes on, because we are the custodian of world freedom, tremendous new and challenging responsibilities. We can meet those responsibilities, we can meet the threat of Communist tyranny and we can win out, but we can do so only if the American Government through the legislative processes in the Senate and in the House of Representatives is sufficiently flexible in terms of majority rule to meet this challenge as the changing world situation thrusts this responsibility upon us as the strongest of the free nations of the world.

It is rather shocking that in 1957, at a time when this challenge is greater than ever before, we are still debating whether or not ma-

majority rule ought to prevail in the United States Senate. It seems to me that this is so simple, so basic, so fundamental a democratic truth that there should be no argument about the fact that the rules of the United States Senate ought to provide for free debate, debate that will facilitate the free exchange of ideas in the market place of the ideas, on the floor of the Senate, but after everyone has had the privilege of expressing their point of view and sharpening the issue, of putting the facts upon the record, then the minority having had that opportunity should not be permitted under the rules to block the majority from translating its will into legislative decision and legislative action.

And I think we need to keep in mind that the essential difference between a free society and a Communist society or some other form of totalitarian society is the fact that in a free society, government rests upon the will of the majority, and in a totalitarian society, regardless of what the symbols may be, authority is on a basis unrelated to the will of the majority. You cannot ignore that.

When you get a situation where the majority is unable to translate its will into effective action, then you negate the basic principle around which a free society has been organized. And that is what we think is involved here.

Now, this question of majority rule is not something new. If you go back into the early papers of Hamilton and the other people who were writing and developing and discussing their concepts of how our free society should be organized in the period when the Constitution was taking form, you will find that all of these papers—and this is precisely what we outline in great detail in this document that we submitted in 1951—you will find that there are no documents which will support the contention that the founding fathers thought a minority could block, should be able to block, the will of the majority.

There were five specific areas in which the founding fathers made specific exceptions. In every other case they expected the majority to make a decision, excepting in the case of where they provided for a two-thirds vote.

First, they provided that in the event of an effort to impeach, it required a two-thirds vote. That specifically is set forth in the Constitution.

With respect to the power of expulsion of a Member of Congress, that, too, is specifically set forth requiring more than a majority, a two-thirds majority.

Thirdly, the power of Congress to override a veto which maintaining this delicate balance between the executive, the legislative, and the judicial branches of Government which is the cornerstone of our democratic governmental structure. There, too, they said it required a two-thirds vote to override a veto.

Fourthly, there is the two-thirds vote required with respect to senatorial ratification of international treaties.

And fifthly, with respect to the initiation by Congress of proposals to amend the Constitution, it requires a two-thirds vote.

In all other actions it requires a simple majority, and if the founding fathers had intended that it required more than a simple majority for things other than these five specific matters outlined, then they

would have provided specifically in the Constitution for additional exceptions.

As a matter of fact, in the last days of the Continental Congress when they were beginning to bring together the framework of our Constitution, there were 2 other efforts made to include 2 other specific areas of constitutional authority in this list of exceptions.

There was an effort made to limit the national authority with respect to interstate and international commerce. That failed, and there was a further effort made to limit the national authority with respect to navigation. That also failed.

And the Founding Fathers did not include these two additional exceptions in the five exceptions which are set forth in the Constitution.

Now, the meaning of the Constitution is clear. It means that, with the exception of these five specific matters as set forth in the Constitution, it is the intent of the Constitution to provide for majority rule. And no student of the Constitution of these United States can challenge the conclusion that the Founding Fathers, with the exception of these five issues set forth, intended that majority rule shall prevail, and rule XXII negates and undermines and destroys that basic concept of majority rule.

Now, we believe that majority rule is not only constitutionally proper. We think it is morally right because you cannot have a situation where a minority can abuse its rights and its privileges in order to block the will of the majority.

Now, we all know that rule XXII has had its greatest impact in the field of legislative responsibility as it relates to the rights of minority groups in the broad field of civil rights and in the broad field of civil liberties. Everyone who has studied rule XXII has recognized the fact that rule XXII has been the gravedigger of civil rights legislation.

But I think we need to understand that it goes beyond that.

We are motivated in our desire to bring about the abolition of rule XXII and the establishment of majority rule in the procedures of the United States Senate because of civil rights and because of many other legislative problems. But I would like to take a moment to stress the importance of civil rights.

I think that there is no other aspect of American life in which there is such a serious moral gap between American democracy's noble promises and its ugly practices as we find in the field of civil rights.

The American labor movement has supported efforts to get civil rights legislation, first, because we think it is a matter of simple justice and a matter of simple human decency. We happen to believe that every person in the world, regardless of race or creed or color, is created in the image of God, and we believe that every man should be given the same rights and same privileges and that we ought to write the laws of our land in such a way that the laws of God can operate.

When we have laws on the statute books of America that challenge the concept that every citizen is made in the image of God, then we are immoral. We maintain that civil rights are a matter of human decency and a matter of simple justice in man's relationship to man.

Secondly, we also believe that human freedom is essentially an indivisible value. Hitler taught us that when the freedom of the smallest country of the world was being threatened, the freedom of America was in jeopardy.

Human freedom is not something you can have unto yourself. Human freedom is a value you must share with other people if you are to enjoy it yourself, and when Negro Americans and minority groups are denied their full measure of freedom in America, that means that the freedom of everyone is in jeopardy.

And finally, we are for civil rights in America because we think it is a matter of national survival in terms of the struggle between the forces of freedom and the forces of Communist tyranny.

Last year I had an opportunity to be in Asia, in India, in North Africa. I had a chance to talk to tens of thousands of people in big mass meetings in Calcutta, in Bombay, in the big industrial centers all over the world, and I had a chance to visit people in the small mountain villages, trying to help interpret American democracy to these people in the fight against Communist tyranny. And I say to you, Mr. Chairman and the member of your committee, that this moral gap between what American democracy preaches and what it practices in the area of civil rights can be American democracy's Achilles' heel in the struggle between freedom and tyranny because our immorality in this area of civil rights gives the Communists a psychological weapon in the world in the struggle for the hearts and the minds of people which is devastating to our position in those areas of the world where most of the human family lives.

The thing that we need to understand is that civil rights in America are not a purely domestic matter; that civil rights in America are a worldwide issue.

I went up into a little mountain village in northern India, in the foothills of the Himalayas, only 300 people in the village, and I talked about America. I tried to give them an understanding of really what were the motivations of America. What did we really want to do? And I talked about that we wanted to build a world of peace, a world of human brotherhood, a world in which we could harness the tools of economic abundance, and instead of using the know-how of science and technology to forge the weapons of war and destruction, we wanted to fashion the tools of peace so that we could build a better tomorrow in which people could live in peace and friendship and human understanding.

I tried to make them understand that these were the basic human and moral and spiritual values that motivated America. And when I finished, in village after village, in factory after factory, in city after city, they always got around to talking about this moral gap between the noble promises of American democracy and its ugly practices in the field of civil rights.

Why? Because they are dark of skin. Half of the people of the world are dark of skin. And this is the weak link in the chain that binds American democracy to the free world.

When we unconsciously give the Communists this kind of a psychological weapon, we are giving them a weapon that they are not entitled to have in the struggle for the hearts and minds of people all over the world. And I believe that aside from the question of human decency, aside from the question that human freedom is an indivisible value, we ought to recognize that in the struggle against the ugly and immoral forces of Communist tyranny, we cannot lead the free world unless we get the right kind of moral symbols on our banner. Other

peoples are not going to judge America by how many new shiny bright Chevrolets that General Motors Corp. turns out. It is very impressive. They are very impressed with our economic statistics. They are very impressed by the condition of our plumbing and the fact that we have a lot of television sets in America, but they are not going to judge us by those standards.

They are going to judge us by how we meet our basic moral problems as they relate to the relationship of man to man in our free society.

I happen to believe that power without morality is power without purpose. And you can't flex your economic muscles and say, "Look how strong we are. Look how wealthy we are. Look how rich we are," and expect them to follow your leadership just because you are materially wealthy.

They are going to ask us about these basic human, moral and spiritual values. And this is where we are in trouble. And this is why we believe civil rights ought to be one of the top priority jobs of American democracy.

Now, there is no question about it; we have failed to meet the challenge on the civil rights front primarily because of rule XXII in the United States Senate.

The House of Representatives time after time has passed a civil rights bill.

Senator Javits, you were in the House. You voted for many civil rights bills. A majority of the House did that on a number of occasions. But each time the House of Representatives adopted a civil-rights bill, its grave was dug in the United States Senate by the filibuster rule XXII.

You know, the auto workers are criticized for having had sitdown strikes some 21 years ago in the automotive industry, and we have had a lot of criticism directed at our union and its leadership. Well, we did have sitdown strikes but they were of relatively short duration. I contend, Mr. Chairman, that the United States Senate has been on the longest sitdown strike in the field of civil rights in the history of the world.

Eighty long years this Senate has failed to take action in the civil rights field, and the reason has been that the minority under the rules could always block the will of the majority.

There have been many times——

Senator JAVITS. Mr. Reuther, would you yield a minute for a correction of fact?

Mr. REUTHER. Sure.

Senator JAVITS. I think it buttresses rather than hurts the fact you just stated to point out the first civil-rights bill was killed in the Senate by a filibuster in 1922, 35 years ago. That is an actual bill, not just the subject.

Thank you.

Mr. REUTHER. We believe that there have been many occasions when a majority of the United States Senate was prepared to adopt legislation comparable to the legislation which already had been passed in the House by majority vote. But the use of the filibuster technique made possible under rule XXII enabled the minority to thwart the will of the majority.

Now, I think we have got to recognize the fact that the Supreme Court is living in the 20th century. But the United States Senate

in the field of civil rights is still living in the 19th century and it is about time the United States Senate catches up with the march of history and begins to translate its majority will into practical and tangible civil rights legislation.

Rule XXII is the roadblock and rule XXII we believe must be removed; in its place we need to substitute a rule that provides for adequate debate, but at the end of adequate debate, for the ability and the right of the majority to translate its will into specific legislative decision.

Now, I think that everybody who knows anything about the problems of America will have to agree that there is serious and ugly and immoral discrimination taking place in America against minority groups in many phases of our national life.

Minority groups, Negroes in particular, are denied equal educational opportunities for their children and here again the American labor movement shares the point of view with many other people in America that every child created in the image of God has the right to that kind of educational opportunity that will enable that child to grow intellectually, and culturally, and spiritually, limited not by a discriminatory educational system but given in the right of each child to grow as God gave it that capacity to grow, limited by no arbitrary decision by man.

Yet millions of Americans are being denied that educational opportunity. They are denied equal citizenship rights. They are denied equal job opportunities. They are denied many other things that every American citizen, regardless of race or creed or color, is entitled to; entitled to in terms of the Constitution and the laws of man, entitled to it in terms of the spiritual laws of God, and yet they are being denied these equal rights.

Now, you don't have to do very intensive research to get plenty of data. You can just dig through the reports of Congress. Here is a report of the Subcommittee on Labor and Public Welfare, the United States Senate, in 1952, the hearings. Just one little paragraph I would like to read on page 18 which indicates in a limited way the impact of these discriminatory policies upon Negroes in American life as it relates to their job opportunities.

Everyone knows we have fought hard in our union to give every American the right to a job based upon his qualifications. We think you should measure a person who applies for a job on whether he is able to do that job, whether he is able to make a contribution in earning not only a living for his family but a contribution to the economic well-being of our whole free society, and whether he can do the job or can't ought to be the basis for the decision, not the color of his skin or the church he belongs to.

But we know that Negroes and Jews and members of other minority groups in America are denied their equal job opportunities based upon the color of their skins or based upon their religious faith, and we think that is wrong. We think it is immoral. And here is this quote from this report. It deals with work-life expectancy:

A study of the length of working life for men shows that under 1940 conditions, the average life expectancy for nonwhite workers, age 20, was about 8 years less than that for white workers of the same age.

Now, the impact upon nonwhite workers based upon this study, using data of 1940—and that is not ancient history—meant that a

nonwhite worker because he was denied justice, because he was denied what every human being is entitled to because he is a human being, regardless of his color or his creed, a nonwhite worker lived 8 years less on the average.

I say America cannot live with its own conscience and it is unworthy of leading the free world as long as it is guilty of that kind of immorality of man against man. That is why we feel strongly about this, because we think that this is a matter of justice. It is a matter of morality. And we think America cannot lead the free world in the struggle against the immorality of Communist tyranny unless we get the right symbols on our world banners, and rule XXII is the road block.

But rule XXII not only has an impact upon civil-rights legislation. It has an impact upon the broad legislative problem.

Senator Anderson put it very ably back on January 18, 1954. I want to say that Senator Anderson made a great contribution to American democracy when he on several occasions assumed the major leadership for leading the fight in the struggle to abolish rule XXII and to substitute in its place majority rule in the procedures of the United States Senate.

On January 18, 1954, Senator Anderson in discussing the impact of rule XXII upon the broad legislative processes had the following to say, and I quote:

However infrequently the hammer on the filibuster gun is drawn back and cocked, this veto power of the minority over the will of the majority is, as all of us well know, a factor never overlooked in legislative drafting, appropriations, strategy, and tactics in the Senate of the United States.

In other words, when you sit down to draft a bill, you have got a pistol against your head. You have got always to think about the filibuster, about the possibility of a minority blocking the will of the majority. When you discuss and give consideration to any legislative matter, there is this threat that is there ever present and, therefore, it is taken into recognition; it goes into the formulation of the bill, the strategy, and the whole procedure related to getting that bill enacted into the laws of this country. And I say that this is wrong.

Now, if anyone were saying, well, the majority ought to just be able to walk in Monday morning and arbitrarily impose its will upon the minority, and deny the minority the right to debate, the right of free expression, then that would be wrong. But no one has ever proposed that we have a set of rules in the United States Senate or in the House of Representatives that will not facilitate free debate. But, having facilitated full and free debate, there has to be an end to debate, and a beginning of action. And this is what rule XXII does not permit. It empowers the minority, not to enlighten, not to shed more facts upon the issues before the Congress, not to facilitate a more rational, intelligent decision, but to engage in unlimited debate for the sole purpose of obstructing democratic rule. That is immoral, that is undemocratic. That is un-American. And this is precisely what rule XXII has done.

The Senate has made progress in the fight to abolish rule XXII but we haven't quite made enough progress. We recognize that, once the rules of the Senate are nailed down, it is very difficult to try to

bring about a change in those rules during any session of the Senate. We believe that the best hope of changing the rules is on the day the new Congress is organized, when, according to the Constitution, based upon the authority of the documents we have brought together, 49 Senators have the constitutional right and responsibility for the establishment of rules of procedure for that term of the United States Senate. That is the day the simplest procedure is possible in bringing about corrective steps in abolishing rule XXII.

But, despite the difficulties of trying to get relief during the current session, we nevertheless urge that effort be made and we support Senate Resolution 17, introduced by Senator Paul Douglas, of Illinois, Senator Ives, of New York, and others.

What does this resolution provide? I have a copy here. It provides that after 15 days of unlimited debate that a majority can close debate.

Now, I think that any reasonable person would agree that 15 days of full and continuous debate—the number of hours is a matter for the Senate to decide—that that is not an attempt to restrict unduly the right of full and free debate. After 15 days—not on the 10th day, not on the 14th day, but only after 15 days of full debate, can the majority decide to close debates so that it can act.

This resolution also would strike out section 3 of rule XXII which unconstitutionally would attempt to bind all future Senate bodies by the rules of the past. This is unconstitutional for the simple reason that if this is constitutional, if the 81st Congress of the United States Senate can pass a rule that goes into eternity, then a man elected to the United States Senate in 1958 is a second-class Senator because he is denied his full constitutional prerogative by the previous action of the United States Senate before he was elected and came to the Senate.

I maintain that every Senator elected at any election from any State in the Union has precisely the same constitutional rights and privileges and prerogatives when he is sworn into the United States Senate as any other Senator throughout the history of this body.

Senator TALMADGE. Would you yield at that point? Could not the same argument be made about any law adopted by any Congress or even about the Constitution of the United States itself—that is, that it ought not to be binding because we were not living at the time it was passed?

Mr. REUTHER. But you can repeal laws and you can amend the Constitution according to due process. The Constitution provides for rules of procedure. The Constitution is a living document.

Senator TALMADGE. So do the Senate rules. They provide for changes under the same conditions.

Senator JAVITS. Would you yield at this point? They do, but don't they also provide for absolutely unlimited debate in respect of such a rule change if this part 3 of rule XXII stands, even more opportunity for a filibuster than an ordinary debate which can be closed by 64. Isn't that what you are really talking about? Practically, it is impossible.

Mr. REUTHER. As a practical matter, what do you do? You build into rule XXII in section 3 a super filibuster, so that you practically have no relief in terms of breaking the filibusters and bringing about a corrective rule.

I maintain that on the first day of every new Congress, on the first day, when the Senate is being organized and new people who have been elected are being sworn in, on that day the Senate starts from scratch and it can do anything it wants by majority decision; 49 Senators can act.

Senator TALMADGE. Would you yield at that point? Why do you think the framers of the Constitution provided for one-third of the Senators to be elected every 2 years, divided them into classes and gave them a 6-year term if they did not mean for the Senate to be a continuing body?

Mr. REUTHER. Because the Founding Fathers in their wisdom were trying to find a workable compromise and balance between direct representation and proportional representation which we have in the House of Representatives based upon population and the fact that we had a problem of how we could put together the various States of the Union in a common Union. And, therefore, they worked out 2 legislative bodies, 1 the House of Representatives, based upon direct representation, proportional representation based upon people, and the other type of representation in the Senate based upon the fact that we had States who were binding together to form a Union.

Now, this was the compromise. It was quite different than the British structure. The House of Lords in Great Britain has really no legislative function, while the United States Senate has an equal legislative function. So they were bringing about a compromise, and in the second body, unrelated to proportional representation, they decided that there they would have a rotating system but this does not change the fact that the Founding Fathers in the Constitution, and the documents are there to prove this contention, provided that the Senate of each new Congress when it organized, had the right, by majority decision, to establish its own rules of procedure. Otherwise, the original Senate would have written a set of rules for eternity.

Senator TALMADGE. Now, you say the Constitution of the United States grants the Senate the right to make its own rules. You agree to that?

Mr. REUTHER. I do.

Senator TALMADGE. So do I. And the Senate has written its rules under those provisions, therefore, is it not a fact that under that authority the Senate can write any rules it may see fit?

Mr. REUTHER. It can, sure. We are not challenging that. By majority decision on the first day of the new Congress, on the day the Senate is organized it has the right to write any set of rules it wants and if 49 Senators want to write a rule that is undemocratic, they have that privilege. But 49 Senators have the right to write majority rules, too.

Senator TALMADGE. Would you yield at that point? Has the Senate not always held itself to be a continuing body, from the time of its founding up to the present time?

Mr. REUTHER. That is part of American folklore. It has nothing to do with the American Constitution.

Senator TALMADGE. Would it not be pretty late for the Senate to decide after 165 years that it is not a continuing body?

Mr. REUTHER. Senator Talmadge, it is never too late to do the thing that is right morally.

Senator TALMADGE. Let me be sure that I understand your position. You say if a majority of the Senate says we have no rules, it can in fact, abolish them and write new ones.

Mr. REUTHER. I say that under the whole concept of a democratic society—and the Senate is an essential part of our democratic society—they must, of necessity, provide that the majority have the right to write the rules that will govern their relationship one to another.

Senator TALMADGE. The Senate or the Supreme Court decision, not withstanding?

Mr. REUTHER. Well, there are no Supreme Court decisions that set aside the Constitution.

Senator TALMADGE. There is a Supreme Court decision holding that the Senate is a continuing body. Of course, I disagree with the Supreme Court on many of its decisions.

Mr. REUTHER. I have noted that.

Senator TALMADGE. Now, one other point—

Senator JAVITS. Mr. Chairman, before we leave the Supreme Court decision I would like to insert into the record the opinion in *McGrain v. Dougherty* (273 U. S. 135), constantly referred to here which involved a completely different question, and all the Court held in that case was that the Senate had the power to revive a committee started in one Congress by action taken by the Senate in the next Congress. I don't believe that the opinion holds any such thing that the Senate is a continuing body in regard to its rules, and instead of arguing about it, I submit pertinent selections from the opinion for the record.

Senator TALMADGE. The Senate has voted on several occasions that the Senate is a continuing body. I have no objection to the insertion.

(The pertinent portion of the Supreme Court decision in *McGrain v. Dougherty* (273 U. S. 135, pp. 180-182) is as follows:)

*** We conclude that the investigation was ordered for a legitimate object; that the witness wrongfully refused to appear and testify before the committee and was lawfully attached; that the Senate is entitled to have him give testimony pertinent to the inquiry, either at its bar or before the committee; and that the district court erred in discharging him from custody under the attachment.

Another question has arisen which should be noticed. It is whether the case has become moot. The investigation was ordered and the committee appointed during the Sixty-eighth Congress. That Congress expired March 4, 1925. The resolution ordering the investigation in terms limited the committee's authority to the period of the Sixty-eighth Congress; but this apparently was changed by a later and amendatory resolution authorizing the committee to sit at such times and places as it might deem advisable or necessary.¹ It is said in Jefferson's Manual: "Neither House can continue any portion of itself in any parliamentary function beyond the end of the session without the consent of the other two branches. When done, it is by a bill constituting them commissioners for the particular purpose." But the context shows that the reference is to the two houses of Parliament when adjourned by prorogation or dissolution by the King. The rule may be the same with the House of Representatives, whose members are all elected for the period of a single Congress; but it cannot well be the same with the Senate, which is a continuing body whose members are elected for a term of six years and so divided into classes that the seats of one-third only become vacant at the end of each Congress, two-thirds always continuing into the next Congress, save as vacancies may occur through death or resignation.

Mr. Hinds in his collection of precedents says: "The Senate, as a continuing body, may continue its committees through the recess following the expiration of a Congress";² and, after quoting the above statement from Jefferson's Manual, he

¹ Congressional Record, 68th Congress, 1st session, p. 4126.

² Senate Rules and Manual, 1925, p. 303.

³ Vol. 4, sec. 4544.

says: "The Senate, however, being a continuing body, gives authority to its committees during the recess after the expiration of a Congress." " So far as we are advised the select committee having this investigation in charge has neither made a final report nor been discharged; nor has it been continued by an affirmative order. Apparently its activities have been suspended pending the decision of this case. But, be this as it may, it is certain that the committee may be continued or revived now by motion to that effect, and, if continued or revived, will have all its original powers." This being so, the Senate being a continuing body, the case cannot be said to have become moot in the ordinary sense * * *.

Senator TALMADGE. Now, one other point, Mr. Reuther. It requires two-thirds of the Senate to propose an amendment to the Constitution, does it not?

Mr. REUTHER. That is correct. That is 1 of those 5 specific exceptions that the Founding Fathers wrote into the Constitution.

Senator TALMADGE. If the Senate saw fit by sheer force of numbers, it could submit a constitutional amendment by a simple majority, could it not?

Mr. REUTHER. Well, the Senate can't amend—they could initiate a constitutional amendment but it would have to follow the due process as outlined in the Constitution.

Senator TALMADGE. And the courts have held that one cannot go behind the rollcall. So, if the Senate were completely devoid of character, it could submit a constitutional amendment by 49 votes. That is the same as the suggestion you make on Senate rules. I am not advocating it, but that is what you are suggesting for Senate rules.

Mr. REUTHER. I maintain when a majority of the people in any deliberative body makes a set of rules by majority action, that is not being irresponsible. That is not being arbitrary. That is merely exercising the responsibility of the democratic majority. It is when the minority blocks the will of the majority that you are dealing with irresponsibility.

And this is precisely what rule XXII—why are you opposed to majority rule in the United States Senate, Senator Talmadge?

Senator TALMADGE. It would take me about 2 hours to tell you.

Mr. REUTHER. I already know. You don't have to state it.

Senator TALMADGE. I will have plenty of time to state my views but today we want to hear your views.

Mr. REUTHER. I am very happy to give them. I am glad to have the opportunity.

Senator JAVITS. Would you yield at this point? We are delighted to hear your views and they are very enlightening. In deference to our colleague, Senator Clark from Pennsylvania, who is now here, how much longer do you think you will take?

Mr. REUTHER. About 2 minutes. I would like to point out while supporting Senate Resolution 17, we oppose Senate Resolution 30 because we do not believe that it comes to grips with the basic problem. Senate Resolution 30 would substitute in place of the 64 votes required for cloture a two-thirds vote of those present and voting.

Now, that may sound like it is some relief but when you look at a practical situation, if you take the situation on January 4, 1957, at which time Senator Anderson's motion on the abolition of rule XXII was on the floor of the Senate, there were 93 Senators present and voting. Thirty-eight voted one way, 55 voted the other way, which means that two-thirds of 93 present and voting is 62. So you get a

* Vol. 4, sec. 4545.

** Hinds' Precedents, Vol. 4, secs. 4396, 4400, 4404, 4405.

reduction from 64 to 62; this really is of no real importance and that is why we think that that resolution 30 is not the answer.

Senate Resolution 30 also tends to nail down this concept that the Senate of one Congress can bind into eternity future Senates, which we think is unconstitutional.

We believe that the establishment of majority rule is a top priority matter in terms of the Senate rules of procedure. In 1953 there were 21 votes against rule XXII. In 1957 there were 41. So we made great progress in that period. We lacked 7 votes. The people of America lacked 7 Senators willing to vote for majority rule.

I, personally, believe that with the work of this committee, with the work of other groups in America, between now and 1959, when the new Senate is organized, we ought to be able to find the other seven Senators who are willing to commit themselves to majority rule and the abolition of rule 22. We urge your committee to make such recommendations to the Senate because we believe that the abolition of rule 22 will establish majority rule of the United States Senate and make the Senate a more responsive, more responsible body in terms of basic civil-rights legislation and other important legislation. It will better equip the American Government to deal with the many complex and challenging problems that we must face and find answers to in this period when freedom and tyranny are engaged in a life and death struggle.

Senator TALMADGE. I want to congratulate you on your presentation, Mr. Reuther.

There is one thing you brought up about which I would like to ask you 1 or 2 very brief questions.

You told how in your travels you found considerable opinion to the effect that our failure to do certain things in the field of civil-rights legislation was being used against us in the world struggle.

Now, was it the contention of the persons with whom you spoke—or is it your contention—that there is more freedom in Russia and the other Communist countries than there is in America?

Mr. REUTHER. Senator Talmadge, my understanding of what tyranny is like is not an academic matter. I haven't read it in a book. I have lived under Hitler. I have worked in trying to help build the German underground, the fight against fascism and Nazi tyranny. I have lived in the Soviet Union and worked there as a technician. When the Ford Motor contracted to build the model A plant, because I had done tooling in the Ford Rouge plant, I went over there as a technician. I lived under Hitler and I lived under Stalin's tyranny, and I say, while the Russian people may have made progress economically, they may have more bread than they had under the czar because they have industrialized their country, they do not have more freedom.

I told the people of India that this is the essential difference between what we are trying to do and what the Russians are trying to do: We want to get food into the people's stomachs without putting their soul in chains. We want more economic betterment. We want better living standards. But we want more human freedom, more spiritual freedom, and the Communists don't give you any of this.

Senator TALMADGE. Then you do not think we have to apologize to Russia or any other Communist state about our freedom?

Mr. REUTHER. I do not think we ought to apologize to the Russians or the Communists anywhere about America, but I do think we have

got some homework to do to square America's promises and to abolish its ugly practices. I say it is wrong.

I happened to be born in the world with one color of skin. I don't think that God thinks I am a special person in his eyes. I think that I am no better nor worse than anybody else and I say when the laws of man block the operation of the laws of God in man's relationship to man, that is wrong and that is what is happening in America, and that is the thing you can't explain to people all over the world.

I just happened to think that freemen can win out over tyranny, but I think we have got to work at some of our unfinished jobs in America, and civil rights, I think, is one of our most important and serious problems. We have got to find a way to get over it. I personally believe, Senator Talmadge, that the people in the South want to work this out, too. I don't think the people in the South are bad people. I know thousands of them. I have great respect for them. I, personally, think that, if given a chance, the people of the South want to work this problem out just as much as I do.

Senator TALMADGE. I agree with you and they are working it out. I happen to know the members of your union down there and they are very fine folks.

Mr. REUTHER. They sure are.

Senator TALMADGE. Senator Javits, any questions?

Senator JAVITS. I would like to question you for a long time.

Mr. REUTHER. I would like to have you.

Senator JAVITS. You have a provocative and perfectly magnificent statement, very well prepared, and very illuminating, even to people who have been through this, they thought, from stem to stern.

I have just two questions. Senator Clark is waiting. We wish to hear from him very promptly.

One is this. Is it a fact, in response to Senator Talmadge's question, about tyranny in the Soviet Union, that to people in areas where there isn't a tremendous amount of sophistication in world affairs, it is easy to say a plague on both your houses because of the breakdown of civil rights and the presence of discrimination because of color in certain areas of the United States, not alone in the South but very heavily in the South, and that is really the essence of your argument, not that anybody would equate the tyranny in the Soviet Union with the freedom in our country.

Mr. REUTHER. That is right. You see, if you can sit down and list all the virtues of America and the lack of virtues in the Soviet Union, you could have a checklist and go over these things, there is no question about where we will come out. But here we are dealing with this emotional thing. The Communists keep throwing it at us. They don't have to give any answers, they just keep accusing us. The problem we have, we do have, we do have a problem in America that gives them a tremendous emotional and psychological weapon with which to beat us over the head.

Senator TALMADGE. They also complain about our capitalistic system, among other things.

Mr. REUTHER. That isn't giving us any trouble because you know I know something about capitalism and I know something about their kind of system. Frankly, I would rather bargain with General Motors than with Uncle Sam. I said many times at least they don't have an Army.

Senator TALMADGE. I agree.

Senator JAVITS. You know, Mr. Reuther, it is hard for many people to understand when liberals are very passionately devoted to private enterprise. You are giving the answer.

Just one question further, and then I have nothing further to ask you.

From your great experience here, what do you think of the chances for civil-rights legislation in this session of Congress if we don't do something about rule XXII?

Mr. REUTHER. Senator Javits, I have given this matter a great deal of serious thought because I am concerned about this matter. After all, this is my country and my children are growing up here and I happen to think that America is the last best hope of freemen everywhere. If we don't do these jobs here, the world is in trouble. I, personally, think that the United States Senate has before it now a bill—they will postpone actual debate now for a couple of weeks but very shortly you will be debating the bill that was passed in the House and it relates to civil rights. I believe that when that bill comes out, the Senate of the United States ought to resolve and ought to so advise the American people that you are going to have full debate and that if a minority attempts by the technique of filibuster to block the will of the majority, the majority ought to serve notice upon the minority that if it takes all summer, you are going to sweat out the filibuster.

I think you ought to have a couple of weeks of normal sessions and then step it up on a 2-shift basis, about 16 hours a day, and then get it on a swing-shift basis around the clock and wear out the filibusterers, and outlast the filibuster and permit the majority to vote.

I think that the majority has the moral right of staying with this and sweating out the filibuster. And I think that if the majority lets it be known that that is what is going to happen, you will take some of the incentive and initiative out of the filibusterers. I think that if that is done, this Congress can go home with a civil-rights bill on the statute books.

President Eisenhower is committed to sign it and America will have delivered a powerful blow against immorality at home and a powerful blow against Communist propaganda in the world.

Senator JAVITS. You have got some Senators with you.

Mr. REUTHER. Thank you.

Senator TALMADGE. Thank you very much.

Senator Clark has been waiting for some time. We are very happy to have you with us, Senator.

STATEMENT OF HON. JOSEPH S. CLARK, A UNITED STATES SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CLARK. Senator Talmadge and Senator Javits, I appreciate very much the opportunity to appear before you this morning, and also the opportunity of listening. I am frankly happy that I had to wait awhile because it gave me an opportunity to listen to that splendid presentation by Mr. Reuther whose views I find strikingly similar to my own, and since they are, I shall be very brief with you gentlemen this morning.

In my opinion, an early revision of rule XXII would be a great service to the Senate, to the American people and to the democratic

process. In my judgment, the measure which I hope your subcommittee will recommend and the full Rules and Administration Committee report out favorably is Senate Resolution 17 offered by Senator Douglas on which I and 13 other Senators are cosponsors.

Since you gentlemen are fully familiar with that resolution, I won't take the time to discuss it at any length. I do feel, however, that whether that resolution or some other one meets with the approval of this Rules Committee, it is of greater importance that some change in this rule should be forthcoming at this session of the 85th Congress.

What we need, of course, and I imagine we would probably all agree to this, despite our differing points of view on the basic issue, is a rule which will allow the minority to be heard fully and completely but which, at the same time, will permit the majority to act ultimately. I don't think there is a single Senator who would like to see rule XXII so curtailed or emasculated that it would prohibit full and complete discussion and debate of every issue that comes before the Senate.

The time does come, gentlemen, when action is required and when it does come, the Senate must be free to act. At the moment, rule XXII effectively prohibits it from acting.

Now, no rule of the Senate I think should be placed above the Constitution of the United States. I guess, Senator Javits, you weren't actually in the Senate when we had the debate on rule XXII, but I am sure that you followed it very carefully.

Senator JAVITS. Not only followed it but Mr. Roush included me as one of the 41 Senators he relied on to vote that way.

Senator CLARK. I am sure his conclusion is justified.

Senator JAVITS. Entirely.

Senator CLARK. I don't always concur—in fact, very rarely do I concur with the views of the Vice President, but I cannot fail to concur with his view expressed from the rostrum at that time to the effect that section 8 of rule XXII operates as an infringement on the constitutional power of the Senate to make and change its own rules. I would differ with the Vice President in this respect. He seemed to limit that right in his comments from the Chair to action taken in the very first days of the Senate, of the session. I would feel that that right was a continuing right and was not curtailed by the passage of time, and, for that reason, I would suggest that if it becomes impractical or not feasible to report out a comprehensive revision of rule XXII favorably, and I hope that a favorable revision will be recommended, but if it didn't, I would like to suggest favorable consideration and passage of Senate Resolution 20 which was offered jointly by Senators Humphrey, Anderson, Douglas, and myself on January 9, 1957.

That proposed resolution states that it is the consensus of the Senate that section 8 of rule XXII of the Standing Rules of the Senate having operated as an infringement on the constitutional right of the Senate to make its own rules, is now void and of no further effect during the 85th Congress. Adoption of this resolution would make it possible for the Senate itself to change its rules, and was attempted last January because of the possibility that you gentlemen are unable to get a majority of the Committee on Rules and Administration to report out at this time a comprehensive revision of rule XXII.

Now, I want to make it clear that that would be a point of retreat in the event you are unable to get Senate Resolution 17 out because I think that—reporting favorably Senate Resolution 17—is what should be done. There are times, as we know, when we can't get done everything we want. At least Senate Resolution 29 would remove an impossibility on the changing of the rules by the Senate, itself, by making section 3 of that rule ineffective and void.

I would oppose the suggestion of the minority leader, Senator Knowland, that there should be written into rule XXII a provision, and I quote:

That the rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules—

because I believe that to be restrictive.

Senator JAVRS. Will the Senator yield at that point?

That is the proposal of the majority leader, too.

Senator CLARK. Then, as sometimes happens, I find myself in disagreement with the majority leader, too.

I would suggest that a more desirable provision would be:

The rules of the Senate shall continue from one Congress to the next Congress until changed by the vote of a constitutional majority of the Senate.

This would both retain the power of the Senate, itself, to change its rules at any time, and yet by requiring a constitutional majority—that is, 49 Senators—prevent changes by a mere majority of the quorum.

I believe the subcommittee has before it a number of proposals as to how rule XXII should be amended from among which it is the subcommittee's proper function to select a recommendation to the full Committee on Rules and Administration.

Now, at this point, I am going to briefly violate—and I assure you, Senator Talmadge, it will be very brief—the rule of relevance which I think you have quite properly applied to the deliberations of this subcommittee, and I am going to violate that rule of relevance—

Senator TALMADGE. I don't think one Senator has ever called down another Senator for irrelevance.

Senator CLARK. My purpose in violating this rule of relevance before your subcommittee, is to urge your subcommittee to see if we can't get passed a rule of relevance in the Senate itself. We three are lawyers, and I am sure each of us probably with respect to different matters has been restless and unhappy about the constant violation of the rules of relevance in the Senate. Of course, we don't have a rule of relevance now, so you can't violate a rule that isn't in effect. A rule of relevance is a necessary part of a speedy and intelligent procedure. The absence of a rule of relevance unnecessarily slows down Senate action.

Almost every debate on important legislation is interrupted by Senators who discourse on other matters that have nothing to do with the one under discussion. Adverse comments by citizens in the gallery and by the press tend to bring the Senate into public disrepute as an effective legislative body. Indeed, gentlemen, the most important reason in my judgment for changing the rule of the Senate, both with respect to rule XXII and with respect to establishing a rule of relevance, is to restore prestige to that great institution, which we all three belong to, throughout the country and the free world.

I am sure that I differ with at least one member of this subcommittee when I say that in my judgment our real danger today is political lag, not the undue concentration of power. The real danger is the inability of the Congress of the United States to act quickly enough to solve critical worldwide and domestic problems before it is too late. We should be alert to make the Senate an efficient instrument of good government rather than a pleasant and leisurely institution unable to deal effectively with the problems of the modern world because its rules of procedure are geared to the 18th and not the 20th century.

Senator TALMADGE. Senator, thank you very much for your fine statement.

Any questions?

Senator JAVITS. Thank you very much, Senator Clark.

Senator TALMADGE. We appreciate your appearing and we are sorry you had this delay, but Mr. Reuther was already on the stand--and, I understood, with the permission of the Senators who would follow.

Senator CLARK. I do hope it will not be considered a sort of apple-polishing gesture if I say I am very happy I had the privilege of listening to Mr. Reuther.

Senator TALMADGE. Thank you, very much.

Senator NEUBERGER, you are next.

Senator NEUBERGER. Thank you.

STATEMENT OF HON. RICHARD L. NEUBERGER, A UNITED STATES SENATOR FROM THE STATE OF OREGON

Senator TALMADGE. We are delighted to have you with us.

Senator NEUBERGER. It is a pleasure to be here, Mr. Chairman. You are very kind to bear with me, and I want to assure you I will be very brief today.

I have listened to Senator Clark's testimony, which I thought very able and with which I am in substantial agreement, and that will make it possible, I know you will be relieved to hear, for me to be more brief than I originally thought.

In my opinion the United States Senate must be able to vote, one way or the other, on crucial national decisions, if we are to pride ourselves on the claim of being the world's greatest parliamentary body.

I am cosponsor, with a bipartisan group of 14 Senators favoring civil rights legislation, of a new Senate cloture rule which would permit two-thirds of the Senators present and voting to limit Senate debate after 1 additional hour's allowance for each Senator and by a majority of 49 Senators after 15 days of debate.

As you, of course, realize, the present rule XXII requires 64 Senators to vote to shut off debate.

When a number of us made the fight at the beginning of this session to adopt a new rule XXII, we were met with the argument that the Senate, as a so-called continuing body, does not adopt its rules at the beginning of each Congress. We were told to follow the regular procedure for changing the rules after committee hearings and report.

I am glad these hearings are now being held.

While the chairman of the subcommittee and I might not agree on the substantive issue at stake, I wish to commend him for holding these

hearings and giving all viewpoints an opportunity to be heard on this very crucial matter.

The time has come to follow through on our effort last January and to give the Senate a clear opportunity to decide whether we want to be able to end debate and reach a vote on any issue or whether we want to maintain the right of a minority to block a vote and to hamstring Senate action by a filibuster.

I would like to concur in what Senator Clark said, that probably the filibuster has done more than any other characteristic associated with the Senate to tarnish the reputation of the Senate in America and throughout the world—particularly when the right of debate is abused by a Senate minority for the purpose of blocking a Senate vote on helping a minority in the Nation.

Senators may and often do have legitimate disagreements over the merits of issues and bills. I believe in full debate in the Senate, to bring out all points of view and to give ample time to the public to study the issues and express its reaction. But I can conceive of no defense for a deliberate tactic of preventing the Senate from ever voting at all on a bill. Far from being the skillful use of parliamentary procedure, such a deliberate course represents the complete denial and destruction of parliamentary procedures and of the democratic process.

The Senate does not have to stand still for it. It is within our power to adopt a new, moderate, two-thirds rule for ending debate, which will protect a Senate minority opposing a bill and leave plenty of room for true debate, and it is high time we did so.

In conclusion, Mr. Chairman, I should just like to say this: I believe that a restriction on limited debate would do a great deal for the Senate itself as an institution. One of the things that has disappointed me as a Member of the Senate—there have been many things that I certainly have approved and that have delighted me—but one of the things that has disappointed me has been what I regard as the quality of the speeches we all make in the Senate. I think the reason for this is that there is a feeling on the part of many Senators, perhaps all of us at this table included, that we have to talk at great length. When we talk at great length, we necessarily repeat ourselves.

There are only so many ideas in the world. There are only so many words in the world.

I have been reading a book recently about Mr. Churchill, who is probably the greatest speaker of our age and certainly the most skillful user of words in the English-speaking world, and this book points out how relatively briefly Mr. Churchill always spoke to Parliament, how he always had the exact word to express his thought, but that his speeches are relatively brief, and I believe that perhaps the Senate in its impact on the country and the whole free world might be improved if there was not such an encouragement to lengthy and unlimited speaking.

I should also like to express my agreement with Senator Clark in his suggestion that there be a rule of germaneness. I was on the Senate floor the other afternoon when we were considering a resolution sponsored, if I am not mistaken, by a Democrat, Senator Douglas, and a Republican, Senator Knowland, dealing with our desire to have the United Nations investigate the atrocities in Hungary.

Here was an issue that has stirred the hearts and souls and emotions of mankind all over the world. Namely, the terrible Russian barbarism and Soviet cruelty in Hungary.

Here the United States Senate was asking the United Nations to use its moral influence in this cataclysm that had occurred to Hungary and which outraged decent people everywhere. During the course of this discussion, while Senator Knowland and others stood on the floor and answered questions about Hungary, one after another of the Senators would pop up and talk about anything—about dredging a creek in his State, about how they approved or disapproved the United States Supreme Court, and so on.

Afterward I met in the reception room with some schoolteachers from my State—intelligent, educated people. They were people who, I think, had never before been in the gallery of the United States Senate. They had visited our State legislature.

They told me how they were shocked by that kind of procedure; that, in the midst of a discussion of the solemnity of what had happened in Hungary, where the lives of men and women were snuffed out, and here the United States was to express its opinion on that, Members of the Senate all over the place were getting up and talking about anything, regardless of how trivial, casual, or even humorous. They expressed to me how really disappointed they were, those schoolteachers from Oregon. And I think they may well be typical of schoolteachers from Georgia, Idaho, New York, or any place else.

Mr. Chairman, let me thank you very much for your courtesy to me, and your kindness in letting me come here to present my views.

Senator TALMADGE. We appreciate your coming and presenting your views.

Senator JAVITS. I have one question, Senator Neuberger, if I may, and I shall not detain you. I may say, too, parenthetically, that these three particular Senators have a rather good record on speaking to the point and not too long, although they may not always agree in their views. You are identified with what is considered the liberal group in the Senate, regardless of party, and quite properly, and I have tremendous admiration and respect for you.

Senator NEUBERGER. Thank you very much.

Senator JAVITS. Do you feel that the liberals are perfectly willing to accept a stricter cloture rule, even though it may sometimes interfere with something they feel very strongly about, just as much as we ask those who are opposed to the civil-rights bill to accept it in the greater interest of the country and the functions of the Senate?

Senator NEUBERGER. Certainly. I am perfectly willing to have a majority of the Senate decide any issue in which I am interested. If they decide it contrary to my point of view, I may not be pleased about it, but I certainly will accept it. Just take, for example, the Hells Canyon issue. You know how vitally concerned, emotionally and personally, I am with that. But nobody from my State has ever suggested that I should stop the Senate from voting on the Hells Canyon issue merely because the Senate might vote contrary to our particular wishes on the matter. I am perfectly willing to abide by a majority of my colleagues on any possible issue that would come up.

Senator JAVITS. Thank you.

Senator TALMADGE. Thank you very much.

Are there any other Senators present? Senator Robertson is here to introduce the Honorable John J. Wicker, Jr., who is representing Dan Daniel, the national commander of the American Legion. I am taking Mr. Wicker out of order because this is the second time he has appeared with this testimony and he has to catch a train.

Senator JAVRS. Senator Wicker, Senator Talmadge has been so gracious to witnesses for the side that I believe in, that I would like to welcome you myself and thank you very much for appearing.

Senator TALMADGE. Senator Robertson?

STATEMENT OF JOHN J. WICKER, JR., ATTORNEY AT LAW, REPRESENTING W. C. "DAN" DANIEL, NATIONAL COMMANDER OF THE AMERICAN LEGION (INTRODUCED BY HON. A. WILLIS ROBERTSON, A UNITED STATES SENATOR FROM THE STATE OF VIRGINIA)

Senator ROBERTSON. Mr. Chairman and gentlemen of the committee, I have been attending this morning a meeting of the Senate Appropriations Committee engaged in marking up the Defense bill which, as you know, is about one-half of the budget.

I appreciate this opportunity to appear before this committee to present an able and highly esteemed friend from Virginia.

Last year, when the Senate Judiciary Committee was conducting hearings on the so-called civil-rights bill, I introduced as a witness the same gentleman who is with me today. I have known him for many years; first, as an outstanding lawyer, as a member of the State Senate of Virginia, and as one of the founders of the American Legion, and a former Virginia State commander of that organization.

He is a former chairman of the judiciary committee of the Virginia Bar Association and a present member of the executive council of the insurance law section of the American Bar Association.

He was president of the electoral college of Virginia in 1944 and chairman for the first half of the 1945 Constitutional Convention of Virginia. He has served on several State commissions and boards.

Most important, for our present purpose, however, he is an astute student of the law and a dedicated believer in the principles of constitutional liberty and in the institutions, including the Senate of the United States, which are designed to preserve that liberty.

Last year he gave a convincing and scholarly argument against proposed legislation which he and I both felt would constitute a threat to constitutional liberty. Today I am sure he will be equally skillful in presenting his views on why it would be dangerous and undesirable to change the rules of the Senate in a way which might remove some of the protections of minority rights which were deliberately provided by the Founding Fathers or prevent the full discussion of constitutional issues which is necessary for the preservation of the spirit as well as the letter of that great document.

It is a pleasure for me to present to this committee the Honorable John J. Wicker, Jr., of Richmond, Va.

Senator TALMADGE. Thank you very much.

Mr. WICKER. Senator Robertson, I appreciate your kindness in coming here today, and I am grateful for your generous and gracious introduction.

It is indeed a pleasure, Mr. Chairman and members of the subcommittee, to be here.

My name is John J. Wicker, Jr. I am an attorney at law and for many years I have been a member of the bar of the Supreme Court of Appeals of Virginia, of the Federal Court in Virginia, and of the Supreme Court of the United States. I reside, as I have for most of my life, in Richmond, Va. I am also a former Virginia State senator and I was temporary chairman of the 1945 Constitutional Convention of Virginia.

I mentioned my service in the State senate. My good friend, Senator Byrd, sometimes introduces me to somebody up here as "Senator" Wicker and the person will say, "Oh, you have a new colleague up here." Then Senator Byrd will say, "No, he is an alumnus of a much more exclusive body—the Senate of Virginia—which is limited to 40 members."

I am appearing before you at the request of W. C. "Dan" Daniel, the national commander of the American Legion and upon his authority, to express the views of the national commander, with which views I am in full accord—

Senator JAVITS. Is the national commander from Virginia, too?

Mr. WICKER. Yes, sir, from Danville, Va.—literally born in a log cabin, by the way. As a youngster he had to quit school and go to work. He took a job at \$2.50 a week, 11 miles away, and he walked barefoot to the Dan River Cotton Mills, sweeping up lint, and he is now personnel manager of that mill, the largest single-unit textile mill in the world.

Senator JAVITS. My father was a great economic success, too. The most he ever earned a month was \$45.

Mr. WICKER. I am speaking to you concerning a number of resolutions pending before you to amend and modify rule XXII of the Standing Rules of the Senate, relating to cloture.

The national commander was invited to appear before you by the distinguished Senator from Georgia, Senator Herman E. Talmadge, and being unable to appear in person because of previous engagements, he has requested and authorized me to appear in his stead.

GENERAL PURPOSE AND EFFECT OF PENDING RESOLUTIONS

While the several resolutions pending before you with regard to cloture have some differences in language and in detail, they all appear to have the same general intent and purpose and would probably have the same general effect; namely, to make it possible for less than two-thirds of the duly elected Members of the Senate to shut off debate and to deprive more than one-third of the duly elected Senators to their right to unlimited debate.

PENDING RESOLUTIONS WOULD PERMIT 49 SENATORS TO INFLUENCE 47 SENATORS

As the rule now stands, the views and voices of United States Senators upon pending legislation can be shut off by the concurring vote of 64 out of the 96 elected Senators. Under these pending resolutions, cloture could be applied and debate terminated at any time, by the concurrence of only two-thirds of these Senators actually voting

on the resolution of cloture, provided that they constituted at least a bare majority of the total membership.

Thus, the sentiments and opinions and judgments of a large number of duly elected United States Senators—voicing and reflecting the sentiments and opinions and judgments of the citizens of their respective States—could be stifled and silenced by the active concurrence of a bare elected majority. And this would be true regardless of how fundamentally important the issue might be.

While the rule now requires 64 affirmative votes to apply cloture, the pending resolutions would reduce that required number by 15—that is a reduction of almost one-fourth—so that the required minimum would be only 49 Senators, provided not more than 24 other Senators actually voted the other way. Forty-seven Senators might be conceivably opposed to the pending legislation and/or opposed to cloture; but unless at least 25 of them were actually present and voting, their opposition would be ignored and count for nought.

SENATE AND HOUSE ARE COORDINATE AND OF EQUAL DIGNITY BUT FUNDAMENTALLY DIFFERENT

Our Founding Fathers very wisely provided for two distinct bodies in the Federal legislative branch. The House of Representatives, chosen on a population basis and constituting a large representative body, is fresh from the people as a result of elections every other year. The Senate, being a smaller and consequently much more deliberative body, with each State being represented by two Senators regardless of wide variations in population and area, has its membership elected for 6-year terms with only one-third of the body being elected every 2 years.

Anyone making even a cursory study of the fundamental principles and aims and purposes which the framers of the Federal Constitution had in mind in providing for these two bodies—so vastly different in their size and basis of representation and terms of office and times of election—will recognize that, while the powers of the two Houses are coordinate, their methods of operation would, in many particulars, be vitally and fundamentally different.

LIMITATION OF DEBATE APPROPRIATE AND NECESSARY IN HOUSE BUT NOT IN SENATE

Obviously, anything like unlimited debate in any legislative body as large as the House of Representatives (numbering 435 Congressmen) would be completely out of the question. Consequently, limitation of debate in the House of Representatives is not only traditional and historical, but is also absolutely necessary in order to permit the House to operate.

By sharp contrast, however, the Senate, with a total membership of 96—substantially less than one-fourth of the number of the House—can operate efficiently and effectively without limitation of debate. In fact, the Senate has actually done so throughout its existence.

ANYTHING IMPORTANT ENOUGH TO JUSTIFY CLOTURE WILL HAVE ACTIVE
SUPPORT OF AT LEAST 64 SENATORS

Anything so serious and so dangerous to our American form of government—as shutting off debate and stifling free expression and argument by United States Senators—should never be sanctioned without the affirmative concurrence of at least two-thirds of the membership of the Senate. If any real emergency arises that requires and justifies a limitation of debate, surely the emergency would be recognized and acted upon by at least two-thirds of the Senators.

May I interpolate there to say the history of the Senate is replete with occasions when there have been matters of imminent importance—war declarations, embargoes, and things of that type that have required prompt and immediate action, and although sentiment was not unanimous in the Senate, nevertheless there was no difficulty in obtaining a prompt vote on those matters.

Senator JAVITS. Senator, would you yield a second at that point. You will, however, grant to those of us who feel that civil rights bills are a matter of urgency the sincerity and conviction of our views. You assume in what you said that a civil rights bill is not an imminent and urgent matter. Some of us, including myself, believe that it is.

Mr. WICKER. That is right, yes. Of course, there are exceptions on all sides of every question. I know of you and your views and I know of many other Senators whose views are in sharp contrast with mine. But I am confident they are just as sincere and honest in their convictions and purpose as I am in mine. I am confident of that; yes, sir.

However, on the matter of the urgency, and pending so-called civil-rights legislation, I don't agree at all that there is anything that would put that in a comparable class with immediate national peril that might be brought about, as in the past, by sudden attacks or by sudden chaos all over the country in the way of weather or flood disasters and things like that when you need immediate action.

I think the difference of opinion over so-called civil rights is perhaps a sociological matter.

Senator JAVITS. It is a fact that there have been outbreaks of violence on this issue in part of the South as recently as the school segregation cases. That is all I refer to, and I respect greatly the sincerity of your views, sir, and the views of the national commander. I just wanted to have it clear that by silence we didn't agree that that was the only thing that is urgent.

Senator TALMADGE. If you will yield at that point. I hate to divert the record, but inasmuch as you have brought out the outbreaks of violence in the South, there also have been outbreaks in the North, in New York State.

Senator JAVITS. I don't now know of any outbreaks of violence in New York State of recent origin. But I do know a State in the North analogous to New York—Illinois.

Senator TALMADGE. I seem to recall some sort of boat excursion up the river from Buffalo on which there was quite an affray—in fact the police called it a riot.

Senator JAVITS. I think what I had in mind—however, I accept what the Senator has said—is what are called race situations of more major scale.

Mr. WICKER. Yes. There have undoubtedly been outbreaks of violence not only in the South but in the West and some parts of the North on these racial matters, and those outbreaks have taken place in the past. But I would like to express the opinion and conviction that if the pending "civil rights" legislation is enacted, you will have far more outbreaks than you ever had before. Don't ever get the idea that by passing so-called civil rights legislation nationally you are going to decrease the liability of racial conflict and racial outbreaks in the North and South.

Wherever you find that a large number of the two races, the Negro race and the white race, getting together, the frictions are bound to occur. You have them right here in Washington. I read in an Associated Press dispatch this morning where Washington's newest public school, the Shadduck school, right here in Washington, D. C., is being almost completely destroyed by vandalism. That has been integrated recently.

That is because of the natural conflicts that occur.

Senator JAVTS. As Senator Talmadge said to Mr. Reuther, this is something I could talk on for a couple of hours.

Mr. WICKER. That is right.

And any proposition of that kind which cannot secure the active voting support of at least two-thirds of the duly elected Senators does not deserve to be adopted.

With only 2 Senators elected by any 1 State to represent that State and its people, it would be unreasonable to silence those Senators from expressing their views fully—especially on measures which they believe may involve a violation of fundamental constitutional rights—unless at least two-thirds of the membership of the Senate affirmatively vote to close debate.

Any attempt to shut off debate which cannot command the affirmative voting support of at least 64 out of the 96 elected Senators must have inherent in it such weakness and such objection that it deserves to fail.

MINORITY OF SENATORS, OBSTRUCTING WILL OF MAJORITY, IS SOMETIMES BEST FOR PUBLIC WELFARE

It is claimed that rule XXII permits a minority to obstruct the will of the majority. If that be true, it is not necessarily a damning indictment because our history shows many instances in which a bare majority, if unfettered and uncontrolled, would have done willful violence to the legitimate rights of minorities.

To enable cloture to be applied upon the concurring vote of less than two-thirds of the elected Senators would undoubtedly result in the hasty enactment of some legislation which would otherwise be defeated if debate were sufficiently prolonged to enable the American public to become fully informed as to the merits or demerits of the proposed legislation and to transmit their sentiments to their representatives in the Senate. In the very nature of things there is not as much opportunity for this formulation of informed and considered public opinion in connection with the passage of legislation in the House of Representatives, but this opportunity should by all means be preserved in the Senate.

**MINORITY OF SENATORS MAY ACTUALLY REPRESENT MAJORITY OF
CITIZENS**

A minority of Senators may actually be representative of a large majority of American citizens and of American territory. For example, there are 10 States having a combined total of only 20 United States Senators, and yet these 10 States have a combined population constituting a substantial majority of all the citizens of the United States of America, and also a majority of territory. Even as it stands now, the rule is fraught with some danger of unduly stifling debate but this danger certainly should not be increased—as it would be—by a weakening modification of the rule by the pending resolutions.

**PRESENT RULE HAS NOT PERMANENTLY KILLED ANY MERITORIOUS
LEGISLATION**

Of all the legislation that has failed of passage at one time or another in the United States Senate, because of unlimited debate, very few measures have failed of ultimate enactment. In fact, the few that have failed permanently were those that were of such a vicious type, fraught with such genuine peril to our American system of government, that they fully deserved the defeat they experienced.

SENATE EXPECTED TO BE MORE DELIBERATE THAN THE HOUSE

In view of the important differences in size, basis of representation, terms of office, times of election, prerogatives and functions, the Senate was designed and intended to operate quite differently from the House. It is not unreasonable to say that the Senate was intentionally created of such size and type as to make sure that many things hastily approved by the House would not receive the approval of the Senate.

Elected entirely every 2 years, the House is "fresh from the people" and, quite naturally, reflects the current popular sentiment of the people at the moment. But the Senate, elected by thirds over a period of 6 years, represents a much broader span of public opinion. I should say broader time span of public opinion. Consequently, from the very beginning of our Government, the Senate has been expected to be more deliberate than the House; ordinarily to concur in House action but just as properly to refuse concurrence when any sizable segment of the Senate has reasonable doubt of the long-range wisdom of House action.

**MORE DELIBERATE SENATE ACTS AS BULWARK AGAINST EXECUTIVE
DOMINATION**

While the House and Senate are of equal dignity, there are many important functions performed solely by the Senate; for example, the confirmation of important executive appointments and ratification of international treaties. If limitation of debate could be brought about by less than the concurring vote now required, it is conceivable that the Senate might not be able to discharge its important functions as intelligently as it should, and as it now does.

The smaller size, staggered changes of personnel, and representation on the basis of individual States rather than population, all

combine to show that the Senate was consciously designed to act also as a safeguard against executive domination. Otherwise, why is it that the Senate, rather than the House, must approve or reject important official appointments made by the President? Obviously because—ordinarily although not always—the majority of the House is more apt to be of the same political party or governmental persuasion as the President. Thus, ordinarily, the House is more likely to “go along” with Presidential policy. The Senate, however, being more removed from the popular pressures and changing passions of the day, is more apt to apply its own deliberate judgment. And whenever necessary, in the interests of constitutional government, the Senate is expected to act as a deterrent and checkmate against hasty action, regardless of whether that action originates in the House or in the Senate.

It has been true in the past—and may well be so in the future—that it is a minority of both parties in the Senate that must be counted upon as the last bulwark against improper harmful legislation. And this bulwark should not be destroyed or weakened, regardless of how high and noble the motives of the proponents may be.

HISTORY WARNS OF THE DANGER OF BARE MAJORITIES

With no reflection upon anyone, let us remember that most of the foreign tyrants of the past have acquired absolute and despotic power on the temporary but surging wave of popular sentiment of the day—allegedly to promote social welfare and so-called civil rights, and other things of like nature. Few indeed would have succeeded in their autocratic seizures if their countries had been blessed with a legislative body with the courage, power, and deliberative character of the United States Senate. In the few instances where there was indeed a legislative body at all comparable to our Senate, the first step of the tyrant and his cohorts was to suspend or repeal all rules which permitted anything less than an absolute majority to oppose him. Of course, it may be said that “such a thing could never happen here.” Well, that same thing was said—and believed—in every country before it succumbed to the tyranny of a dictator.

WHY WEAKEN MINORITY IN SENATE TO STRENGTHEN MINORITY OUTSIDE?

It is a strange and paradoxical thing that many of the leading proponents of cloture, who seek to make it possible to stifle the voice of substantial minorities in the United States Senate, appear to be doing so principally in the hope of thereby bringing about the passage of pending legislation, allegedly designed to protect miscellaneous minorities of people here and there in the United States outside the Senate. It would seem that Senators should be at least equally zealous in protecting the rights of their fellow members of what has well been described as “the most august deliberative body in the world” as they are in seeking to set up a vast bureaucracy of Federal inquisitors and prosecutors to ferret out and punish fancied grievances of a comparatively few individuals.

RULE XXII HAS PROVEN ITS VALUE TO PUBLIC WELFARE AND SHOULD NOT BE WEAKENED

In conclusion, may I say seriously, in all seriousness, as everything else I have said has been, I believe rule XXII has proven its value to public welfare and should not be weakened. It has had considerably more than a century of useful life and it would not be for the best interest of the United States and its people, or of our American form of government, to emasculate or otherwise weaken this rule, regardless of the temporary benefit that might occur in connection with some specific piece of legislation at the moment.

The modification and weakening of the rule would bring about far greater bitterness and resentment; that is, in the actions that would follow from it, than whatever may be occasionally aroused by the operation of the rule as it now stands.

Gentlemen, that concludes my statement.

Senator JAVITS. I have just one question, Senator Wicker, because we want to hear Senator Kefauver. This is the personal position of this Commander Daniel of the American Legion?

Mr. WICKER. Oh, yes, as you know—for you are a good member and so is Senator Talmadge here—the Legion is composed of about 3 million members and absolute unanimity of opinion is never possible. I heard Mr. Reuther testifying here a while ago as president of the CIO. Yet some members of the CIO who are right prominent down in Virginia heard he was going to testify and know I was going to be here, and they told me they are not in agreement with him.

Well, they aren't—but he is the president.

Senator JAVITS. I wasn't quite trying to make that point. The point is that the American Legion, itself, as a body at a convention or some other form, or even by its governing committee, has not passed any resolution or passed on this question.

Mr. WICKER. Not directly on this, but the commander looked into the matter very carefully and was advised that the position that he was about to take—which I say is as I have expressed, this is my statement, but it is directly in accord with his views, and on his behalf—that that was in line with actions that have been taken in the past by the American Legion.

Senator JAVITS. Well, is there any contention here that this is the American Legion speaking, not Commander Daniel?

Mr. WICKER. Senator, if you will recall the beginning of my statement—I said I was representing the national commander of the Legion, and upon his authority to express the views of the national commander.

Senator JAVITS. He is speaking, personally.

Mr. WICKER. He is speaking as national commander of the Legion just as Mr. Reuther was speaking as president of something.

Senator JAVITS. Mr. Reuther produced a resolution which he said his union adopted. Mr. Daniel is not doing that.

Mr. WICKER. No; we are not producing any resolution.

Senator TALMADGE. Thank you very much for your very fine statement.

Senator Kefauver, we are happy to have you with us. You may proceed, if you will, at this time.

**STATEMENT OF HON. ESTES KEFAUVER, A UNITED STATES
SENATOR FROM THE STATE OF TENNESSEE**

Senator KEFAUVER. Thank you very much, Mr. Chairman, and Senator Javits.

The problem with which this committee is concerned is an old one. As early as 1848, Daniel Webster attempted to remove one of my predecessors, Senator Hopkins L. Turney, of Tennessee, from the floor for "irrelevancy in debate." Daniel Webster's move failed.

Nevertheless, it is one which the Senate should face and solve and I am glad the committee is taking testimony and looking toward a solution.

In any organization, public or private, the purpose of rules is to facilitate the transaction of business. It is thus a paradox that in the Senate of the United States, business may not be transacted and lawmaking may be thwarted by the parliamentary device known as the filibuster.

It is a device which denies two premises of the democratic process: the ability to persuade by rational argument; and the ability of the majority to express its will.

How did this situation come about? Senator Arthur Vandenberg expressed the answer in these terms in 1948 as President pro tempore of the Senate:

In the final analysis, the Senate has no effective cloture rule at all—a small but determined minority can always prevent cloture, under the existing rules. A very few Senators have it in their power to prevent Senate action on anything—the existing Senate rules regarding cloture do not provide conclusive cloture. They still leave the Senate, rightly or wrongly, at the mercy of unlimited debate ad infinitum.

Senator George Norris, who was in charge of the famous filibuster on the armed ship bill of 1917, long afterward set down his final reflections as follows:

Filibustering is made possible under the rules of the Senate and not under any law. It could be prevented largely by a simple rule; but the jealous pride with which the Senate guards its tradition of open, unlimited debate makes the adoption of the rule difficult, if not impossible; and this, to many Senators, a sacred right, often put the Senate in a very ridiculous and sometimes, I think, unpatriotic position. * * *

Thirty-five years' experience with rule XXII led former Senator Hendrickson of New Jersey to conclude:

The lesson of history has been that the present rule, which requires the votes of two-thirds of the entire Senate to close debate, is the least effective of all the methods under consideration. It has not been successful once since its adoption in 1949; it would have failed in 16 out of 19 times, if it had been the rule from the beginning.

Most of the States whose Senators have opposed effective limitation of debate in the United States Senate have rules limiting debate in their own upper chambers. According to an authoritative study, 48 out of 48 States, through parliamentary devices, forbid filibustering in their upper chambers.

The case against the filibuster in the United States Senate may be summed up as follows:

1. The basic American principle of majority rule is ignored. Not only is the majority thwarted in its purpose to enact public measures,

but it is also coerced into acceptance of measures for which it has no independent desire. President Wilson took bitter note of this fact when he said:

The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action.

2. Filibustering puts into the hands of one Senator or a group of Senators something akin to the veto power often employed by the Soviet Union in the United Nations.

3. Filibusters are expensive in terms of money as well as time. Twelve of the most famous filibusters of the past occupied, on the average, 30 days of the Senate's time. To run the United States Senate, it now costs more than \$1 million a month.

4. Filibusters deprive the Senate of its power to legislate, a power conferred upon the two Houses of Congress by article I, section 1 of the Constitution. The right to vote is an essential prerequisite to the exercise of the power to legislate, since neither House can pass a measure without voting. A prolonged filibuster, by preventing the Senate from expressing its will on a subject, erects a barrier against the performance by the Senate of its constitutional right and power to legislate.

5. Filibusters are a travesty on freedom of debate in this body. It is one thing to ventilate thoroughly a controversial measure. It is quite another to talk on and on solely for the sake of preventing action. To paraphrase President Wilson once more:

A little group of wilful men, representing no opinion but their own, (may render) the great Government of the United States helpless and contemptible * * * The only remedy is that the rules of the Senate shall be so altered that it can act.

At various times in our history national party platforms have favored such alteration of the rules of procedure of the Senate as would permit the prompt transaction of the Nation's legislative business. The latest expression of this support was repeated in the Democratic Party platform, adopted August 15, 1956, in Chicago. This plank reads, and I know it has been referred to frequently here:

In order that the will of the American people may be expressed upon all legislative proposals, we urge that action be taken at the beginning of the 85th Congress to improve congressional procedures so that majority rule prevails and decisions can be made after reasonable debate without being blocked by a minority in either House.

As a special Senate subcommittee constituted to probe just this very problem, I believe you are uniquely qualified to provide possible answers in a detached and undisturbed atmosphere.

No suggestion, however meritorious, would be acceptable to the Senate if it cuts off the right of any Senator to express his opinion fully upon every measure to be voted upon, or any amendments that might be presented. Any change of the rules governing procedure must be weighed against this consideration. Yet an effective anti-filibuster rule must be adopted because it is the imperative duty of a legislature not merely to debate, but to legislate and, therefore, to tolerate no course of action by any of its members which will prevent legislation. The majority of the Senate is rightfully responsible for the conduct of its own affairs and is therefore entitled to use all means necessary to that end.

The present rule is totally unfair. Since 64 affirmative votes are required absence from the Senate because of death, sickness or other reason puts an intolerable obstacle in the path of decision.

Right now we have a vacancy in the United States Senate that requires two affirmative votes to make up for that vacancy. We know also that some Members are ill, other Members are always necessarily away on official business—but their votes are counted actually as votes against cutting off debate, thus requiring two votes each to overcome.

I therefore propose, Mr. Chairman, that rule XXII of the Standing Rules of the Senate be amended to provide that debate may be brought to a close by two-thirds of the Senators present and voting on any pending business, rather than the present constitutional two-thirds.

In other words, I am here to support Senate Resolution 80.

Some of the other proposals are intriguing, and I have in times past sponsored such proposals, some of which are now pending, such as that which would require a two-thirds vote up to a certain time and thereafter a simple majority to close debate.

Under other conditions I might be inclined to approve of such a proposal. But the two-thirds proposal is the one which has been agreed upon by the majority and minority leaders and by a number of other leaders, and I think we should take this approach which has such a substantial agreement rather than divide our forces among alternative proposals.

In this manner, ample opportunity to debate is preserved. The merits of the measure under debate may receive full and free airing. It assures that sufficient time to acquaint the people of the country will be allowed before a vote is taken so that the public may be thoroughly informed of the issues involved.

The almost insurmountable difficulties inherent in obtaining a constitutional two-thirds majority may be circumvented, and yet it would take more than a simple majority to limit discussion. The minority therefore would be protected.

I am certain that with the additional present safeguards of close committee study before action, and both judicial and executive review following passage, the Senate may reach an equitable compromise in its aim to guard the rights of the minority and yet protect the will of the majority.

Mr. Chairman, in closing let me say that filibusters are usually thought of in connection with civil rights legislation; some people think of them exclusively in connection with civil rights legislation.

We are told that we face one after the July 4 recess on President Eisenhower's civil rights bill. Of course, I know that it is unlikely that this rule may be changed so as to have an effect on any debate that will occur on the present civil rights bill. Now, however, filibusters are by no means limited to that subject. We know that the League of Nations was filibustered; the longest filibuster in history was over a rivers and harbors bill. I have already mentioned the famous filibuster over the armed ship bill of 1917.

In the present hydrogen age, the Senate cannot longer afford the luxury of a procedure that could render it powerless at a crucial period of history.

I thank the members of the committee for giving me the privilege of coming here.

Senator JAVITS. Senator Kefauver, I thank you very much for that most illuminating statement, and I wonder whether in your support of Senate Resolution 30, you also include item 2 of section 3 which deals with the rules of the Senate continuing.

Senator KEFAUVER. Yes, I do.

Senator JAVITS. You support the whole resolution?

Senator KEFAUVER. I do.

Senator TALMADGE. Senator Kefauver, thank you for your very fine statement. I appreciate your appearing.

The next witness is Mrs. Dorothy Frankston of Wheeling, W. Va. You may proceed at will.

STATEMENT OF MRS. W. J. FRANKSTON, WHEELING, W. VA.

Mrs. FRANKSTON. I am one of those strange persons who represents myself, Senator, as an individual, and I appreciate your recognition.

Senator TALMADGE. We have been seeking to get grassroots opinion on this vital question.

Mrs. FRANKSTON. I am opposed to the abolition of rule XXII, Senator Talmadge, and these are my reasons.

The issues involved in unlimited debate in the Senate have been argued and discussed at various times over a period of many years, and I do not presume to come before you today with any new arguments. However, as an American citizen, and one who believes in and cherishes those fundamental freedoms guaranteed in the Constitution of the United States, I welcome this opportunity to appear before you at this time.

Although there appear to be many reasons for changing rule XXII which would place a limitation on debate in the Senate, a thorough perusal of these arguments produce as many and more reasons why debate should remain unlimited.

One of the major arguments presented in favor of limiting debate is that the principle of majority rule is set at naught, and that the will of the majority of the people of the United States is being thwarted. While it must be admitted that a minority in the Senate can under the present rule obstruct passage of legislation, it must also be conceded that the—

very purpose of rules in any deliberative body is to protect the minority from the potential tyranny of the majority (Senator William E. Jenner).

Furthermore to say that the will of the majority of the American people is being thwarted is a very broad statement indeed. The will of the people cannot be accurately gaged by highly organized pressure groups and lobbyists working for passage of certain legislation.

Those clamoring for limitation of debate advance the reasoning that prolonged debate—such as filibustering results in slowing down the passage of legislation, often killing important legislation altogether. They would also have us believe that filibustering is inherently evil and should therefore be eliminated. Again, it must be granted that legislation has been killed by the use of the filibuster, but it does not necessarily follow that filibustering is wrong. But—even if we were to concede for the sake of argument that filibustering is evil—it still does not logically follow that we must then limit debate. Our democratic processes, too, are often criticized for being cumbersome

and slow—and often inefficient, and rightly so, but because these evils exist must we and should we then change our form of government? Some form of dictatorship would be more efficient and certainly less cumbersome, and can act with utmost speed. But are these things worth the loss of liberty? The evil which would result would be far worse than the existing evils.

It is unfortunate that civil rights legislation is being made an issue in the discussion of free debate. The individual citizen is led to believe that this is the main issue, and that the rules must be changed in order to get such legislation passed. Such arguments only serve to cloud the real issues and to play on the emotions of the people. It should be obvious that much more is at stake than the passage of one piece of legislation. The Senate has a duty to inform as well as enact laws. Prolonged debate gives the people an opportunity to make their views known. It has also been said that unlimited debate discourages changes, and sometimes changes which might be desirable. This takes us back to our original premise—being, that while evils do naturally exist in this freedom of debate the good which results from such freedom far outweighs the bad. Rarely can it be said that bad legislation has been passed after prolonged debate, and the chance for all sides to be heard.

Finally, there is the accusation that the undemocratic conditions which exist in our country today exist because of the threat or use of the filibuster and that many people are losing faith in American democracy because of these prolonged failures to pass certain social legislation. My answer to the first part of this accusation is that undemocratic conditions will always exist as long as human beings are what they are—sinful. This does not mean that we should not work to eliminate such conditions, and to help all our people to achieve personal success and happiness.

But the mere passage of laws is not an automatic guaranty of the elimination of undemocratic conditions. In answer to the second part, I find it difficult indeed to believe that many people are losing faith in our way of life because of our failure to pass such legislation. We do not seem to be suffering from any mass emigration. On the contrary, more and more people are clamoring for entrance to our shores. I believe that even those who would benefit most from such legislation would be the first to admit that in no other place in the world has the individual a better chance for pursuing that kind of life which he desires most. A free society such as ours by its very nature produces those things which are undesirable, and free debate in the Senate by its very nature produces those things which are undesirable. Freedom in anything is always abused, but should we then restrict such things as freedom of speech, of worship, and so forth? It seems to me that we must in both cases choose the greater good for the preservation of those personal freedoms provided for in the Constitution of our United States. Thank you.

Senator TALMADGE. Any questions?

Senator JAVITS. Thank you.

Senator TALMADGE. Thank you very much for your very fine statement, Mrs. Frankston.

The next witness is Mr. Irving Brant of Washington.

STATEMENT OF IRVING BRANT, WASHINGTON, D. C.

Senator JAVITS. Mr. Brant, may I suggest—

Mr. BRANT. I am going to suggest it myself.

Senator JAVITS. That you have quite a record as a scholar. Could you give us very briefly something of your personal qualifications?

Mr. BRANT. Well, you know, that wasn't what I expected at all. I thought you meant on account of the lateness of the hour that I had better put part of this in the record without reading it.

Senator JAVITS. Whatever you desire, but we would like to know a little bit of your background so we will have some qualification of the statement you are making.

Mr. BRANT. That is in my opening statement, my opening paragraph of my statement.

My name is Irving Brant, of 3333 M Street, SE., Washington, D. C. My background is that of a newspaper editorial writer who has turned to historical research and writing. On account of the sectional aspects of the subject you are dealing with, I ought perhaps to remark that I am a native of the State of Iowa, but have been a resident, during most of my adult years, of the State of Missouri and the District of Columbia, with brief periods of residence in Tennessee, Florida, southern Virginia and California.

In 1938, I resigned as editor of the editorial page of the St. Louis Star-Times in order to write a biography of President Madison, of which five volumes have so far been published. This has involved a study of the establishment of our system of Government, including the framing and early interpretation of the Constitution and the activities of Congress during the first quarter century of its existence.

Your committee is considering 6 Senate Resolutions which propose specific changes in rule XXII, also an addition to rule XXXII, and 1 resolution declaring it to be the sense of the Senate that 1 section of rule XXII is unconstitutional. The 6 resolutions which propose changes all have 1 feature in common.

All of them would repeal the amendment adopted in 1949, which made it impossible to stop debate except by the affirmative votes of two-thirds of the total membership of the Senate. In other words, all 6 resolutions propose to put an end to the preposterous and paralyzing situation by which the absence of a Senator is the same as a vote against cloture, and offsets 2 favorable votes, even though the absentee would vote for cloture if present.

Excluding duplications in sponsorship, 54 members of the Senate—6 more than one-half of the entire membership—have attached their names to these 6 resolutions.

These same 54 Senators, in one or another of the resolutions, also ask either for the total repeal of section 8 of rule XXII, which allows unlimited debate on any proposal to change rule XXII, or the amending of that section to strike out that particular feature of it. Thus, a majority of the entire membership has taken a public stand against the clause whose sole purpose and effect is to nullify the provision of the Constitution which empowers the Senate to determine its own rules.

I presume that the invitation to testify before this subcommittee results from the fact that, in consequence of some remarks made about me in Senate debate last January, I wrote a rather lengthy memo-

randum on the development of the previous question and cloture in American and British practices.

This memorandum, along with other material accompanying it, was utilized by Senator Douglas of Illinois in his speech of May 9 on the previous question, and is to be found in the Congressional Record of that day.

My assumption is that you expect me to discuss the attitude toward restriction of debate in the early Congresses of the United States, and the bearing of the original Senate rules on that subject. However, one of your cochairmen, at the opening of these hearings, advised witnesses that the committee's chief desire was to hear a discussion of the specific changes proposed to rule XXII.

Since my review of American and British practice is presented rather fully in the Congressional Record, and is easily available there, I shall deal with it here only in the barest synopsis, as a basis for comments on the seven resolutions you are considering.

As is well known, the United States House of Representatives began to limit debate in 1811 by means of the motion for the previous question. It was confronted with persistent filibustering against the "measures short of war" that preceded the War of 1812.

The alternatives were to surrender to the minority, or to use the power of the majority to end a purely obstructive debate. The majority acted, not arbitrarily, but after many day-and-night sessions, with the clock running toward a compulsory sine die adjournment.

The United States Senate had a previous-question rule from 1789 until 1806, when it was dropped. The rule read as follows:

The previous question being moved and seconded, the question from the Chair shall be: "Shall the main question be now put?" And if the nays prevail, the main question shall not then be put.

The previous question was moved in the Senate on four occasions. In 1789, the nays won and the subject was postponed. In 1792, the question was worded in reverse. It was moved "That the question be not now put." This carried and resulted in postponement. In 1799, the question was moved in the wording required by the rules, "Shall the main question be now put?" The affirmative won, producing cloture. The main question was then put, and it also carried.

On the fourth and last occasion, in 1804, the previous question was moved during the impeachment trial of Judge Pickering. The complicated details of this controversy are set forth in my memorandum on the previous question, and may be found on page 5063 of the Congressional Record of May 9, 1957. Instead of summarizing them here, I shall merely quote two sentences from the diary of Senator John Quincy Adams concerning these proceedings:

On this resolution it was not without the utmost difficulty that any discussion whatsoever could be obtained.

Again:

The next struggle was to prevent all debate upon the resolution.

The majority actually did cut off the debate and proceeded at once to defeat the resolution. Its action, I may add, was by no means so arbitrary as one might suppose from the comment by Adams. The proposal, a procedural one, had already been debated in another form for 3 full days, and defeated.

I would like to ask at this point whether it would be of any advantage to you if I included in my statement a quotation from that memorandum stating what the circumstances were.

Senator TALMADGE. If you desire to do that, permission is granted.

Mr. BRANT. I think, then, that I will do it but I haven't it with me.

Senator TALMADGE. If you will just give it to the counsel for the subcommittee, Mr. Langdon West.

(The material referred to is as follows:)

EXCERPT FROM MEMORANDUM ON THE DEVELOPMENT OF CLOTURE AND THE PREVIOUS QUESTION IN AMERICAN AND BRITISH PRACTICE, BY IRVING BRANT

[From the Congressional Record of May 9, 1957, p. 5963]

"PREVIOUS QUESTION" IN IMPEACHMENT TRIAL

The last senatorial motion for the previous question was made on March 10, 1804, when the Senate was sitting as a court in the impeachment of Judge John Pickering. Climaxing a 3-day debate behind closed doors, Senator White, of Delaware, offered a resolution—regarded by the majority as an accusation of *ex parte* prosecution—"That this court is not at present prepared to give their final decision" upon the articles of impeachment. The reason: no inquiry had been made into the suggestion that the judge had failed to appear because he "was and yet is insane." The official record recounts a series of objections and out-of-order motions leading up to the following:

"Mr. Nicholas hoped it would not be permitted to go upon the Journals of the court.

"Mr. Jackson moved the previous question, viz: 'Shall the main question be now put?'"

Senator White wanted the yeas and nays on whatever was done to dispose of his resolution. Then:

"On motion of Mr. Dayton, the galleries were cleared and the doors closed.

"At 3 o'clock the doors were opened, and the question was taken upon the resolution as at first submitted, yeas 9, nays 19" (Annals of Congress, Eighth Cong., first sess., pp. 362-363).

This record reveals the alignment, Jackson being a lieutenant of Nicholas, who was President Jefferson's right-hand man. In other respects it's far from clear. However, the diaries of Senators John Quincy Adams and William Plumer make it evident that the official reporter transplanted the motion to close the doors, to the point at which they were reopened. The galleries were actually cleared (though not at the first attempt) a short time after the resolution was introduced; the previous question was moved just before the reopening. The remark by Nicholas, which preceded the motion, was made in the middle of a debate which would have been out of order in open session. Both this fact and the nature of the struggle are made clear in the diary of Senator Adams, a Pickering supporter.

MAJORITY WANTED TO PREVENT DEBATE

"On this resolution (wrote Adams) it was not without the utmost difficulty that any discussion whatsoever could be obtained."

He described an opening maneuver by Senator Nicholas, the majority leader, and then wrote:

"The next struggle was to prevent all debate upon the resolution. By our rules there can be no debate on any motion in open court. A motion to close the doors for the purpose of discussing the resolution was rejected."

Senator Smith, of Ohio, asked the meaning of part of White's resolution. The answer could not be given in public, so he reversed his position and furnished the additional vote needed to go into conclave. Thereupon, wrote Adams:

"The galleries were cleared, and a short discussion of the resolution was held . . . Mr. Anderson (of Tennessee) and most of the Members of the majority all the time manifesting the most extreme impatience to open the doors and stop all further debate."

The nature of the discussion is indicated by Senator Plumer's record of the remarks of the majority leader:

"Mr. Nicholas vociferated, order, order, order—I will not submit to hear our proceedings called by the degrading name of a mock trial."

To which White replied that he did not mean to offend the Virginia Senator, but he would not retract his words:

"If in this I have offended him, I am willing and ready to give him satisfaction at any time and place he will please to name."

It was in this atmosphere, after this offer to fight a duel, that Senator Jackson moved the previous question and White demanded the yeas and nays. That forced the issue, but at this point the special impeachment rules took over.

OPENING SENATE DOORS HAD EFFECT OF CLOTURE

Under the rules, all motions had to be voted on by yeas and nays in open court. It was necessary to open the doors in order to vote on Jackson's motion. But opening the doors would produce the precise effect desired from the motion for the previous question. It would stop all debate, because debate was forbidden in open session. It would lead at once to a final vote, because the President pro tempore had ruled that the White resolution was fairly before the court and must be disposed of before other business was taken up, while procedural objections by Adams had balked all attempts at amendment. The effect of the majority maneuver was cloture, and Adams bitterly recorded the result:

"The doors were opened. The yeas and nays were taken on Mr. White's resolution—yeas 9, nays 10." (White had walked out.) *Memoirs of John Quincy Adams*, I, 302. *William Plumer, Memorandum of Proceedings in the U. S. Senate, 1803-07*, pp. 173-177.)

I shall now offer some observations on the factual record.

Had the Senate been governed by the British practice of using the motion for the previous question to postpone a subject, that would have been the object in all four of the cases in which the Senate resorted to it. Instead, both in 1799 and 1804, the purpose and effect were to bring the main question to a vote, and in the 1804 instance the first objective was to halt a debate which was obnoxious to the majority.

There is no possibility that Senator Jackson moved the previous question in order to postpone the White resolution. Had that been the intention, it would have been necessary for the anti-Pickens forces to put the motion for the previous question to a vote and defeat it, thus deciding not to put the main question. Instead, they cut off debate by opening the doors, put the main question, and defeated it. They halted the debate just 2 hours after the question at issue was formally placed before the Senate.

Mr. BRANT. Here then were 4 motions for the previous question in the Senate before 1806, the first 2 resulting in postponement; the third having the effect of cloture, whether or not that was the intention of the mover; and the fourth having the sole purpose of stopping debate and forcing an immediate vote.

The motion for the previous question originated in the British House of Commons in 1604, and is commonly described as a method employed in that body for the sole purpose of disposing of a matter without taking action on it at that time. The use of it to end debate and force a vote, in our National House of Representatives and our State legislatures, is called a perversion of the British practice.

I would like to ask now about your pleasure as to your time. I would like to present what I have here but if it is an inconvenience to the committee—

Senator TALMADGE. We want you to have all the time you want to develop your thoughts, Mr. Brant. Our original decision was to permit Senators as much time as they desired, with other witnesses limited to 30 minutes. But we gave Mr. Reuther an hour this morning; so, if you want to take that much time, there is no objection on my part.

Senator JAVITS. I notice that the statement you have would take you about 10 or 15 more minutes to complete, so you just go ahead.

Mr. BRANT. Looking into British treatises on parliamentary practice, I found the previous question described as a method of postpone-

ment in which the mover voted against his own motion. But if the motion should happen to carry, the effect would be to cut off debate and force an immediate vote on the main question.

However, these parliamentary treatises carried only 3 or 4 references to specific use of the motion in the 17th century, the period of its origin and early use, and gave no indication of the actual results in these few precedent-setting cases.

I therefore examined the Journals of the House of Commons from 1604 down to the present time and found a truly remarkable record. In the 20th century, the previous question has been moved only twice in the House of Commons, and not once since 1911. In the 17th century, it was moved 736 times.

It resulted in cloture 491 times, in postponement 245 times. Now, I do not make the assertion that these results can be directly equated with the purposes of the men who offered the motions. The parliamentary records do not show who made the motions, or why they were made. However, they do reveal that the early form of the motion was whether the question should be now put.

Then, as the Long Parliament stiffened its resistance to Charles I, the wording was changed to a motion "that the question be now put," and at the same time, there was a lopsided increase in the number of motions that resulted in cloture. All I will say is that if 736 Englishmen did not want the question to be put, and for that purpose moved that it should be put, with the result coming out wrong in 5 cases out of every 7, it was ample justification for the War of the American Revolution.

After England passed from the storms of the Puritan Revolution to the calm of William and Mary, the figures changed. From 1700 until 1882—the year in which the House of Commons adopted its cloture rule—the previous question resulted in cloture 115 times; in postponement, 409 times.

Now, it may be asked, why was it that when the House of Commons came to establish a cloture rule, it didn't simply utilize the previous question for that purpose? Well, that is what it did. On February 25, 1881, a year and a half before the word "closure" was applied to the practice, the wording of the motion for the previous question was employed for the avowed purpose—a purpose set forth in the Journals—of stopping debate, and the motion is recorded in the index as a motion for the previous question.

A year later, the House incorporated some special provisions and change the name to "closure." Thus we have before us, not an American perversion of the British motion, but a kindred line of development in both countries.

To this, let me add one more fact. Before the House of Commons converted the motion for the previous question into a cloture rule, it had been dealing with obstructive debate for some years by treating it as contempt of the House, punishable by suspension. That was done under parliamentary practices dating back to 1604, which gave the Speaker power to stop "superfluous motions, and tedious or impertinent speeches."

These same rules were incorporated in Jefferson's Manual, as a guide to Senate conduct, at a time when the Vice President had unappealable power to decide points of order. Here is evidence, then,

that if the question of altering the Rules of the Senate comes before that body under the general rules of parliamentary practice, it will make no difference whether those general rules are looked for in the practices of our 48 State legislatures or in the British House of Commons.

In either line of authority, there is full warrant for employing the motion for the previous question to put an end to debate, and any attempt to filibuster the putting of the motion for the previous question can be stopped by the authority of the Chair, backed by a majority of those present and voting.

Comparing the course of events in the House of Commons, in our House of Representatives, and in the United States Senate, we find two parliamentary principles recognized by all but unequally applied. One is recognition of the basic need for a full and thorough discussion of all proposed legislation, through debate on the floor. The other is the no less basic requirement that every legislative body shall be able to perform its work in accordance with the matured will of the majority.

In all of these bodies, deliberate and prolonged obstruction has been met first with tolerance but finally with a recognition of the need for corrective measures. Only in the Senate have the measures been inadequate. Not one of these bodies lacks the basic procedural power, or ever has lacked that power, to enforce the will of the majority. The persons who deny the existence of the power are those who do not want it exercised.

The question before the Senate today is not, shall there be a cloture rule, but where shall the line be drawn between two extremes? At one extreme is free and unlimited debate, an admirable system in a society of philosophers but giving a small minority an absolute veto in a legislative body. At the other extreme is so sharp a control that it prevents adequate discussion of issues, either through lack of allotted time or by giving too much authority to party leaders.

Senators of all shades of opinion, I am sure, would be extremely averse to such a system of control as we find today in the House of Representatives. But that system ceased 116 years ago to be a mere preventive of filibusters. Even since 1841, when the 1-hour rule was adopted, the House has been taking more and more medicine for a disease it does not wish to cure.

That disease is elephantiasis. If the House had free and unlimited debate today, it would be floundering in chaotic impotence, not merely during filibusters, but every day in the week. The huge size of the House not only destroys it as a debating forum freely open to all Members, but produces the centralized control that either speeds or stifles legislation, depending on the will of those in power. The evil is magnified by the fact that those who possess authority are not truly responsible to the House.

It is equally certain that the Senate does not wish to establish the kind of controls that exist in the British House of Commons. But the Senate could not do so if it desired, because the controls in the House of Commons are the inherent result of the structure of British government, which makes the Prime Minister and Cabinet at once the master and the servant of the House of Commons.

This, too, is a huge body, with 625 members, but it is so thoroughly controlled both by the structure of government and by the party dis-

cipline associated with it that only 40 members are required to form a quorum.

By the structure of British government, limitation of debate always originates with the Cabinet. A motion for cloture by the opposition, or from the back benches of the party in power, against the wishes of the Cabinet, would be equivalent to a motion of no confidence. The carrying of it would produce a crisis in government.

Against this great power of the Cabinet, and the control of debating time associated with it, we should set the fact that the Cabinet ministers are members of the House, subject to relentless questioning by opposition and by back benchers. That system forces a thoroughness of debate that is quite unknown in our House of Representatives, and it imposes a responsibility on the leadership that is foreign to either branch of our Congress.

The question of cloture in the Senate must be considered in relation to the nature of that body. The Senate can control the filibuster, it can free itself from the will of a rampaging minority, without the slightest danger of acquiring the ills that afflict the House of Representatives, and without any possibility of moving into the discipline that marks the House of Commons.

The Senate enjoys the blessing of a small membership and the added advantage of 6-year staggered terms of office.

No legislative body need fear internal controls, harmful to individual rights of members or to public business, as long as it is small enough, and is possessed of sufficient tenure, to enable its members to place the stamp of their individual character and abilities upon their proceedings.

As long as these structural features remain embedded in the Constitution, the Senate will retain the human traits to which the structure gives latitude. As long as this interplay of institutional structure and individual character persists, the Senate will remain basically what it is today.

By its composition and by human nature, working together, it is exempt from arbitrary control, exempt from the possibility of such control, by any official clique.

Within the limits thus outlined, the Senate can exalt or lower itself as an effective and honored branch of our Government. It can choose whether it will function through the freely expressed will of the majority, after a full exploration of issues, or be subject to the capricious rule of an irresponsible minority.

Among the seven resolutions before this subcommittee is one offered by Senators Humphrey, Anderson, Clark, and Douglas, declaring the sense of the Senate that section 8 of rule XXII:

having operated as an infringement on the constitutional right of the Senate to make its own rules, is null, void, and of no further effect during the 85th Congress.

Even if the Humphrey resolution is not reported to the Senate, the question involved in it is almost certain to arise if other changes in rule XXII are presented for action during this Congress. The resolution amplifies the unofficial opinion of Vice President Nixon, given last January, that this section of rule XXII is unconstitutional. The Vice President dealt only with its validity—and asserted it to be invalid—at the opening of a session of Congress, before the formal adoption or tacit readoption of Senate rules.

Mr. Humphrey and his associates say in effect that a rule which is unconstitutional remains so, regardless of formal or tacit readoption. How could it be otherwise? The Constitution does not say that "each House may determine the rules of its proceedings" in the opening week of a Congress, but may not do so afterward except under a restriction that would be unconstitutional if applied in the opening week. The power to determine rules includes the power to change them, and the power to change them cannot be narrower than the power to make them.

To support the argument that section 3 is unconstitutional I ask permission to insert an excerpt from an article written by myself, which appeared in the Washington Post and Times Herald on January 2, 1957, the full text of which may be found in the Congressional Record of January 3, beginning on page 15.

Senator TALMADGE. Without objection, it is so ordered.
(The excerpt referred to is as follows:)

**EXCERPT FROM ABSURDITIES AND CONFLICTS IN SENATE RULES ARE OUTLINED,
BY IRVING BRANT**

[From the Congressional Record of January 3, 1957, p. 15]

The real question is whether the Senate is constitutionally a continuing body. If it is, it can perform its legislative and executive functions without regard to the termination of a Congress. However, if the Constitution does not make the Senate a continuing body in both its legislative and executive functions, it cannot be subject to the mandatory application of past rules subordinate to those functions.

When this test is applied to the Senate's chief business—legislation—the "continuing body" theory breaks down in a multitude of absurdities.

Rule 37 provides that in the second or any subsequent session of a Congress, treaties submitted by the President shall be resumed at the same stage in which they were left at the close of the previous session. "But," the rule goes on, "all proceedings on treaties shall terminate with the Congress, and they shall be resumed at the commencement of the next Congress as if no proceedings had previously been had thereon."

That may be construed in either of two ways. It may be regarded as an acknowledgment that the Senate is not a continuing body as to treaties, save for recognition that the submission of a treaty by the President is not nullified by the transition from one Senate to the next. Or, it may be held to imply that the Senate has power to go on with the treaty in the new Congress, but chooses not to exercise that power.

The latter would be true if, by constitutional mandate, the Senate actually is a continuing body. But observe what this leads to.

Suppose that, in the final session of a Congress, the Senate adopts a rule that treaties shall be resumed in a new Congress at the same stage they reached in the previous one. It then adopts some highly controversial reservations to a pending treaty, comparable to those that killed the League of Nations, but adjourns without final action on the treaty. November comes. The voters elect one-third of the whole Senate and defeat every Senator who voted for the reservations. In January, the incoming Senators discover that they are helpless. The Senate, they are told, is a continuing body. Its new Members are bound by the decisions taken in the previous Congress, with no chance to change the decisions because the right to filibuster is protected by a rule constitutionally binding on the new Senate without its consent. Thus the "continuing body" theory would subvert the Senate's constitutional function as to treaties.

Next, what happens to the legislative function if the Senate is constitutionally a continuing body? Senate rule 32 says that "at the second or any subsequent session of a Congress, the legislative business of the Senate which remained undetermined at the close of the next preceding session of that Congress shall be resumed and proceeded with in the same manner as if no adjournment of the Senate had taken place."

That treats legislative business as if the Senate was understood to die with the Congress. If not, if the Senate is constitutionally a continuing body, it must have power to apply this unfinished business rule to the opening session of a Congress, as readily as to the second session.

And what then? Among the undetermined business of the Senate, at the end of a Congress, is the disposition of bills originating in and already passed by the House of Representatives. If the Senate is constitutionally a continuing body, it has just as much power to pass those bills in the next Congress as in the last one. Then come the absurdities.

Can the Senate hold a conference on such a bill, with the conference committee of a House which has passed out of existence? If House and Senate texts are identical, and no conference is needed, can the Senate obtain the signature of a past Speaker of the House who may be dead or defeated? Or if he has been reelected, will he sign retroactively as Speaker of a dead House?

The crowning absurdity is reached if such a bill is sent to the President and vetoed—as it certainly would be—as unconstitutional. The President would not even be able to send it back, as the Constitution requires, to the House in which it shall have originated. That House would have ceased to exist. It could only be conjured into being by assuming that the House of Representatives is also a continuing body. Thus the chain of incongruities leads to an inescapable conclusion. Either each House is a continuing body, or neither one is.

There is in fact not a vestige of support in history, law, or logic either for the theory that the Senate has the constitutional powers of a continuing body, or that the automatic continuation of its rules has anything mandatory about it.

The very words of the Constitution contradict this claim. It says:

"Each House may determine the rules of its proceedings."

If somebody should propose a rule reading "The rules of the Senate shall not be changed," it would be recognized instantly as a violation of the Constitution. But that is substantially what has been engrafted on the Senate, by a rule making changes in rules subject to a perpetual filibuster, and by denying the inherent power of the present body to make its own rules.

To sustain the power of the Senate to free itself from the dead hand of the past, its Members only need to go to the words of the Constitution: "Each House may determine the rules of its proceedings."

Those who would have the Senate divest itself of this constitutional power can best appeal to the precedent of the ancient Chinese, who handed their sovereignty over to their deceased grandfathers.

* * * * *

Mr. BRANT. In Senate Resolution 30—the Knowland-Johnson resolution sponsored by 39 Senators—there is a proposal to add a new section to rule XXXII reading as follows:

The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

I cannot believe that the 39 Senators who sponsored this resolution gave sufficient thought to the meaning of this particular proposal. It is just as surely unconstitutional as section 3 of rule XXII. It is based on the fallacy that the Senate is constitutionally a continuing body, instead of a body with a partially continuing membership.

It attempts to impose the will of the Senate of the 85th Congress on the Senate of all future Congresses, by fixing the conditions under which the Senate in future Congresses shall be allowed to change its rules. It would prohibit a Senate elected in 1960, or in 1964, or in the year 2,000, from proceeding *de novo* to determine its rules at the opening session of a Congress. Such an action violates section 5 of article 1 of the Constitution, by restricting the power of the Senate to determine its rules.

I am the more inclined to think that this section was proposed without due consideration, because of its ambiguity. What is meant by the words "as provided in these rules?" Does that refer to the rules in effect at the time the restrictive clause is incorporated in them, or

as they may be at some indefinite time in the future? Either alternative is enough to condemn the proposition and to make its unconstitutionality even more apparent.

(Additional views of Mr. Brant on sec. 3 of rule XXII, subsequently supplied for the record, are as follows:)

The Knowland-Johnson resolution fails to repeal that part of section 3 of rule XXII by which proposals to change the Standing Rules are exempted from the provisions of the last paragraph of rule VIII, which reads as follows:

"All motions made before 2 o'clock to proceed to the consideration of any matter shall be determined without debate."

Why should a proposal to change the rules, reported favorably by the Committee on Rules and Administration, be singled out for this discrimination? Only the need to correct a serious evil would induce the committee to place such a resolution on the calendar in the midst of a session of Congress. That is a reason for expediting consideration rather than obstructing it. If the Senate does not wish to consider the proposal, it can save a great deal of time by proceeding under rule VIII and defeating it without debate. If it does wish to take it up, it should not be hampered in its power to do so. By striking out section 3 of rule XXII altogether, as is proposed in other resolutions before this committee, you will place rule changes on the same basis as all other business coming under rule VIII. Otherwise you will perpetuate a rear-guard defense of the very evil you are seeking to curb.

Mr. BRANT. Coming now to the main question—that of strengthening the control of the Senate over debate—we find the Senate facing a legislative situation that calls imperatively for a more workable cloture rule. We also find, in the sponsorship of these resolutions, a majority of the Senate concurring in the need for the change.

Taking the Knowland-Johnson and the Douglas resolutions as the principal alternatives—since these are sponsored by 53 Senators in all—two questions are presented to this committee:

1. Shall the Senate merely drop the requirement of 64 votes for cloture, and go back to the 1917 requirement of a two-thirds majority of those present and voting?

2. Or shall this change be coupled with a provision that if the two-thirds majority is not obtained, the Senate may close debate, after it has extended through 15 additional days, by the vote of a simple majority of the entire membership?

We had ample proof from 1917 to 1949 that the old cloture rule was ineffective. So the real question is: Are there such terrors in control of debate by a constitutional majority—by a majority of all Senators elected and serving—that it is better to continue to tolerate the uncontrollable filibuster while making a pretense of ending it?

If it were proposed to enable a majority to cut off debate at its inception, or so quickly as to prevent the adequate presentation of minority views, or if it could force a vote before there was time for the debate to produce an effective reaction upon public opinion, then I would say that it was a dangerous proposal.

But there is nothing of the sort in the resolution cosponsored by Senator Douglas and 14 other Members of the Senate. The Douglas resolution accepts, initially, the 1917 requirement of a two-thirds affirmative majority of Senators present, but adds a proviso that after 15 days of debate, subsequent to the filing of the cloture motion, it may be voted on a second time and made effective by the support of a constitutional majority.

Even then, there would be an additional period of debate, allowing 1 hour to each Member of the Senate. The shortest conceivable debate,

under this rule, would last through 18 calendar days, and might run far longer, depending on the time at which 16 Senators filed a cloture motion.

Surely nobody will seriously assert that 18 days of debate is too short a time in which to present both sides of any question, when the time is devoted to that actual purpose and not to the purpose of obstruction. The real question is whether there shall be a vote at all. The answer to that lies in the choice between the two-thirds vote and the constitutional majority, as a means of cloture after the debate has become an otherwise interminable filibuster.

On this point let me present some specific evidence. Since 1917, the Senate has voted on 22 cloture motions. Three of these—none later than 1926—received more than 64 affirmative votes, although that number was not then required.

Four of them, including the three above mentioned, were supported by more than two-thirds of the Senators who voted. Of the entire 22, only these 4 stopped the filibuster.

Nine motions out of the twenty-two received a constitutional majority.

Fifteen out of the twenty-two were supported by a majority of those present and voting.

Thus we find that if the rule now asked for in Senate Resolution 17 had been in effect since 1917, 13 out of the 22 motions would still have failed. It is hard to see drastic or dangerous future results in a system that would have produced such mild results in the past.

Eight of these 22 motions dealt with civil-rights bills. Of these 8, only 2 received the votes of more than half the membership. Neither of these was supported by two-thirds of those present and voting.

Observe also the time element in these eight tests of cloture on civil rights. Four of the motions, offered from 1938 to 1944, received less than a majority of the votes of those present.

Two of them, in 1946, received a majority vote, but less than a majority of the entire membership.

The last two, in 1950, received a constitutional majority. Not one of these received a two-thirds vote.

Suppose, now, that the provisions of Senate Resolution 17 had been in the Senate rules during the past two decades. Six cloture motions involving civil rights would have been defeated in the first decade. Two would have carried in the second decade. But all of them would have met defeat under the Knowland-Johnson proposal.

Here is evidence that the passage of a cloture motion by a constitutional majority, in civil-rights matters, does not depend on the mere adoption of a rule making such a vote effective. It depends on the development of public opinion and senatorial opinion.

But there has been no instance yet in which that development has reached a high enough pitch to produce cloture by a two-thirds vote of those present. It may well be that the tide of national sentiment is strong enough today to produce that result. Even if that is true, we still have long-term evidence that the two-thirds requirement is not a method of controlling the filibuster. It is, on the contrary, an enthronement of it in the chair of senatorial authority.

Gentlemen, we live in a world and in an age whose political and economic problems and social tensions impose responsibilities on the

American Government undreamed of a generation ago. We are endeavoring to meet them at the legislative level, and to preserve our own rights and liberties in the process, through a continued reliance on the wisdom and patriotism of an informed majority, both in the electorate and in the Congress.

We cannot cope with our problems if the majority abdicates its power, because the majority cannot at the same time abdicate its responsibilities.

Minority government, without responsibility, is chaos. Minority government, with responsibility, is totalitarianism. The choice before us, unless we are going to abandon our democratic institutions, is effective government through a responsible majority, or the negation of government by an irresponsible minority.

That choice lies before your committee, in helping to decide whether the Senate shall move ahead with a cloture rule made effective by a constitutional majority, or move backward into the familiar and paralyzing frustrations of the 1917 procedure.

Senator TALMADGE. Any questions?

Senator JAVITS. I just want to thank you, Mr. Brant, for what is, in my opinion, at least, as erudite a presentation of this matter as I have heard anywhere, and I think it certainly will contribute very heavily to my thinking. I am very grateful.

Mr. BRANT. Thank you.

Senator TALMADGE. Thank you for appearing before us, and for your very fine statement.

(Additional information subsequently supplied by Mr. Brant is as follows:)

WASHINGTON, D. C., July 8, 1957.

Senator JACOB K. JAVITS,

Senate Office Building, Washington, D. C.

DEAR SENATOR JAVITS: Since testifying before your subcommittee on June 28, I have found definite proof that the motion for the previous question, in early English practice, was deliberately resorted to as an instrument of cloture. It was not by accident, therefore, that it usually had that result. Of the two instances given below, the first rests on an inference too strong to be challenged, the second on direct assertions of purpose by the persons involved.

On April 18, 1640, 5 days after Parliament ended its 12-year dissolution, this entry was made in the Journal of the House of Commons: "Upon the question, whether it should be put to the question, for Mr. Grimston's assuming the Chair, when Mr. Speaker left it, it was agreed it should be put to the question." Upon the main question, "It was resolved, that he should take it."

It is obvious from the nature of that motion, on the naming of a member to preside in committee of the whole, that the purpose was affirmative. It was also a crucial action. The House intended to challenge the arrest by Charles I of members of the last Parliament, and other violations of privilege. The challengers needed a man of proven courage in the Chair, one who would not say, as the Speaker had done in 1628: "Let not the reward of my service be my ruin * * *. I will not say, I will not put the question; but I say, I dare not." So in 1640 they moved and carried the previous question and placed in the Chair Sir Harbottle Grimston, who had just called on his fellows to cure the ulcerous body politic by cleansing it of the causes of its "blotches, blemes, and scabs" (Parliamentary History of England, VIII, 420-421, 435-436).

A fortnight later King Charles offered to abandon the illegal "ship money" system of raising revenue if Parliament would vote certain specified funds for his war against the Scots. The story is told in the Earl of Clarendon's History of the Rebellion, which he began to write in 1640. After 2 days' debate, the popular John Hampden "thought the matter ripe for the question, and desired that the question might be put, 'Whether the House would consent to the proposition made by the King as it was contained in the message?'" This motion was cleverly worded to unite those who disliked either the form or the size of the request.

When this became evident, opponents of the appropriation called again "That the question formerly [i. e., previously] proposed by Mr. Hampden should be put", which seemed to meet with a concurrence. Mr. Hyde then stood up, and desired "that question might not be put." There was no satisfaction in it, he said, for those who would support a smaller appropriation. So Hyde proposed "that the question might be put only upon giving the King a supply; which, being carried in the affirmative, another question might be upon the proportion and the manner."

At the suggestion of the Speaker, Mr. Hyde formally "moved 'that the question might be put.'" There followed, says Clarendon, "a confused clamor and call, 'Mr. Hampden's question,' 'Mr. Hyde's question,' the call appearing much stronger for the last than the former; and it was generally believed that the question had been put and carried in the affirmative * * * If Sir H. Vane, the Secretary, had not stood up and said * * * that the putting and carrying that question could be of no use." The King, Sir Henry (his recognized spokesman) asserted, would accept nothing that deviated from the amount and manner laid down in his message.

That remark may possibly have sent Charles I to his death, for the House at once adjourned; the adjournment without voting funds caused the King to dissolve Parliament next day, and its successor—the Long Parliament—contained his executioners. The pertinent fact is that the House of Commons had before it two competing motions for the previous question, both of them designed to force an immediate vote on the main question. One was designed to force a vote on the main question and kill it; the other to force a vote on one-half of it and carry it. Not only were these purposes set forth plainly by Lord Clarendon, but he repeated the affirmative intent in lamenting the dissolution of Parliament next day. Sir Henry Vane, he wrote, "had been the only cause that a supply was not voted the day before, by his hinderling such a question to be put" (Clarendon, *History of the Rebellion*, 1888 edition, edited by Macrae, I, pp. 108n, 180-182).

Prior to 1640 the previous question had been moved only twice, resulting in cloture both times. In the next 60 years it was moved more than 700 times, resulting in cloture nearly 500 times. The evidence now presented, of affirmative intent behind the affirmative results, depends, of course on the accuracy with which the Earl of Clarendon recorded the purposes and utterances of Mr. Edward Hyde. Nobody was in a better position to know them, since Lord Clarendon and Mr. Hyde were one and the same person.

Yours sincerely,

IRVING BRANT.

Senator TALMADGE. The next witness is Mr. George S. Montgomery, Jr., of New York City.

STATEMENT OF GEORGE S. MONTGOMERY, JR., FOR AMERICA, NEW YORK, N. Y.

We are happy to have you with us, Mr. Montgomery.

Senator JAVITS. May I say, Mr. Montgomery, we are sorry to have detained you so long. We hope it hasn't inconvenienced you.

Mr. MONTGOMERY. Thank you. I appreciate the privilege of being here. I regard it not only as a privilege but as a duty because I think that the issues involved here cut very deep as to the future of the United States Senate and the American nation.

I am an attorney in the city of New York. I am associated with certain organizations, 2 or 3 of which I think are vitally interested in the subject of your hearings.

One is a closely knit organization called For America. It is a non-partisan organization for political action. It has perhaps less than 40,000 voluble supporters. I think there are many more throughout the country who are entirely in sympathy with our objectives. The officers of this organization are the national director, former Governor

of Utah, J. Bracken Lee; cochairmen, Dean Clarence Manion, and Dan Smoot of Dallas, Tex.

The executive director is Gen. Bonner Fellers here in Washington. We have a national policy committee of about 100.

There has been no resolution taken by the supporters of the organization. There was a press release made in March at a meeting of the national committee stating the wishes of For America that the Eisenhower civil rights program be defeated.

I am a member of the national policy committee and of the finance committee.

I am also a member of the interim committee for independent political action, which is a continuation or an outgrowth of the committee that backed the campaign of T. Coleman Andrews and Thomas Werdel last fall. In spite of the fact that the campaign got underway at the 23d hour, and the ticket was on merely a handful of States, we believe that the actual count of votes during that panic-stricken time reached nearly a million. I do not pretend to speak either for For America or for the independent political action committee. My views will be my own.

I place on the record my associations for what they are worth. I will make my views very clear as to the acceptance of any of the proposals here for the tightening of the rules of cloture by saying that if I had my way, the Senate would return to the traditions of 111 years, from 1806 to 1917, when the principle of unlimited freedom of debate existed.

With that reactionary point of view you may well understand what I think of the initial impairment of that principle in 1917. I think it was unnecessary. I think it was abortive. I think it was unfortunate.

By some miracle in 1949 the defenders of freedom actually won a victory. While the rules of cloture were extended to cover matters other than passing on a measure, the principle of unlimited debate with respect to amendment of rules was preserved and the two-thirds of those present and voting requirement was raised to two-thirds of the constitutional membership.

I have heard a great deal this morning by witnesses who preceded me as to the undemocratic principles under which the United States Senate was operating. I want to say, Mr. Chairman, that I do not, I hope I do not live in the sort of democracy that has been described here this morning.

In the Nation in which I live, that of a limited Republic, the principle of rule by majority has very limited application. There are rights of States and rights of individuals which cannot be impaired by any majority, even 99 percent, and when the Senate of the United States chooses to have absolute freedom of speech and debate, I think that is a tradition to which we should return.

I believe that freedom of debate and speech in the Senate is of far greater importance than those five instances in the Constitution which require a two-thirds vote.

I might introduce a little reverse English here when I say that the restrictions on impeachment have for 25 years become more and more irksome to me individually, reaching an emotional peak in this month of June 1957. However, going back to the strange victory in 1949 of the defenders of freedom, we find that those who would curtail

debate in the Senate soon discovered the mistake that had been made, and so in 1951 you will find the forces at work to correct that defeat.

The hearings in October 1951, before your Rules Committee, Mr. Chairman, make very interesting reading. I would say that there has perhaps been no evidence anywhere else, any record in the Senate and House, where the genuflection to pressure groups is more apparent.

I could take 6 months, if I were filibustering in the Senate, to discuss the material in the report of the hearings of October 1951. I will only make two comments.

In the first place, and I am putting this on the record, one of the pressure groups that appeared in 1951—and I assume will appear again this year—was the National Association for the Advancement of Colored People. I want the record to show that the backing of that organization contains among its officers and directors, a majority of individuals with Communist-front affiliations of from 1 to 72. I am not making that as a casual smear because it will fit in later to what I am going to say.

The second part of that record, Mr. Chairman, which I wish to supplement, arose from the testimony of a union official who came before this committee and proposed that this committee study a method whereby the character of the Senate could be changed by a parliamentary trick from a continuing body into a body which wrote its rules by majority vote at the beginning of each session.

Now, this union official has every right to present his views before a committee, but I must say when the temporary chairman of that committee, the then Senator from Connecticut, joined in the pursuit of this solution, the result was not very edifying.

I want further to supplement the record in 1951, and by coincidence the record of this morning, because in both cases this union official stated that he was qualified to talk about what went on in Stalin's mind because he had been in Soviet Russia.

I want the record to show that the union official went to Russia, as evidenced by letters that have come back and are now in public domain, as an avid supporter of Communist principles, and in these letters to his relatives and friends, he expressed himself as hardly able to wait until he could get back to this country to build Communist principles here.

I want the record to show that. The union official was a witness here this morning, Walter Reuther.

Now, the proponents of limitation of debate in 1951 failed of success, and so in 1957 here they are again. I suppose that it will come to something like the 7-year itch. I hope it is no more permanent.

Before you now you have six resolutions. They are all roughly the same caliber that were considered in 1951, with one possible exception, and that is that strange resolution which declares a Senate rule which has been effective since 1806 to be unconstitutional.

Now, Mr. Walter Reuther this morning expressed his belief that that rule is unconstitutional, and you may believe me, sir, that I paid great attention to his words because in this day and age I believe that Walter Reuther is a greater expert in predicting what the Supreme Court is going to do than the most thoroughgoing constitutional lawyer in the country.

The proposals, sir, may be divided into three parts. They all lead to the same thing.

The first is a forthright suggestion that we place the shotgun to terminate debate in the hands of the majority. That is crazy but it is forthright. There is an artistic variation of that proposal which goes through certain preliminary machinery but arrives at the same result.

There is a second proposal that the constitutional two-thirds requirement be reduced to a constitutional majority—that is from 64 to 49.

Then you have the third type, a proposal that the two-thirds constitutional membership be changed to two-thirds of those present and voting.

Now, I wish particularly to recommend that you have nothing to do with that latter resolution. That latter resolution is sponsored, I believe, by the Senator from California.

I have been living in hope against hope and against evidence, for many years that the Senator from California would prove to be the great California conservative. My hopes have been dashed in recent weeks irreparably. In my mind the Senator from California is more properly described as the great California compromiser, and I regard that resolution as a compromise which will lead to nothing but ultimate defeat.

We have had too much of this compromise, retreat, defeat, and I would urge the stout Senators, whose names are appended to that resolution, to reconsider and withdraw their support. I would urge it particularly of the Senator from Indiana, who I know believes that there is no real distinction between the two-thirds of a constitutional membership and two-thirds of those voting. I would like to point out to him that during this period of 1917 to date, it would appear that little difference, if any, would arise from either rule.

But it has not been many years that, in my opinion both parties in Congress, the leadership of both parties, has been under common control. That was not the case during the greater part of the period from 1917. And, therefore, I would expect that an elimination of the two-thirds constitutional membership requirement might well result in unexpected differences, distasteful to the Senator from Indiana and half a dozen other Senators of his like thinking.

Another reason why I would urge the Senator from Indiana and those other Senators to have nothing to do with this compromise resolution, is because we have seen that the first compromise means ultimately, merely after a lapse of time, ultimate victory for the enemy. We have seen that, sir, in the Bricker amendment fight in 1954. After years of building up a watertight Bricker amendment that would protect the American Constitution against improper legislation, when it became apparent that the top Chief Executive elected on a Republican platform was going to betray one of the major planks of that platform by scuttling the Bricker amendment, those stout Senators in that fight determined to compromise, and what happened?

In the first place they, of course, were defeated on the watered-down resolution, and worse than that, they lost a vantage ground that had been a rallying point for millions of Americans fervently desiring the Bricker amendment. A complete state of demoralization followed. They had to start all over again. This is the result of compromise. And if there is compromise in the acceptance of this rule, the same thing will happen. You will have a shotgun majority, after a short period, while the enemy retreats only to return.

Mr. Chairman, you are going to have a voluminous record and I do not propose to make a lengthy statement. I do not wish to duplicate other excellent statements that you will have. I merely want to focus and emphasize one question.

I want to ask this question: From whence comes this powerful drive for the curtailment of freedom of speech in the Senate? I think that the forces behind this movement are concentrated and sinister and I want to express my opinion briefly.

In the first place, let me say that I was born in the State of North Dakota. I spent the greater part of my boyhood in northern Alberta, northern Canada. I graduated from college in northern New England and from a New England law school. I have been practicing law the last 30 years in a northeastern city, the city of New York.

The only appreciable period that I have spent any substantial time south of the Mason-Dixon line was in the year 1917 when I passed several months at the United States naval airbase at Pensacola, Fla., learning to fly. We had the temerity to call it flying in those days. I shudder to think how the young jet pilot of today would describe our antics.

However, I made up quickly for that brief sojourn in southern climes by going to Europe where a good deal of time was spent in flying over the North Sea and along the coast of northern Ireland.

I delve into this presumptuous and seemingly irrelevant geographic biography to point out that the greater period of my life has been spent in areas closer to the North Pole than to the delta of the Mississippi River.

I see abroad today a poisonous propaganda that is endeavoring to make the citizens south of the Mason-Dixon line appear to be monstrous creatures not worthy to bear the name "American."

There is a best-seller novel which is touted from coast to coast, which is being touted in the films and which will be touted on television, dealing with the people of Texas and painting them, the dominant race, as modern Simon Legrees. One of our better patriotic novelists, that gentlelady, Taylor Caldwell, happened to pass through Texas after reading this novel and remarked that from the gulf coast to Oklahoma she could find no trace of any characters such as those described. And of course, she couldn't because they weren't in Texas and they are not in any State below the Mason-Dixon Line.

This effort to paint the southern citizen as a man with his heel on the prostrate Negro is one of the most criminal efforts of our life, to divide race against race, to foment a reign of terror. I believe, sir, that the group that is responsible for fomenting this reign of terror has no right whatsoever to speak for our fellow citizens, the colored race. To me the colored race has tremendous potentialities, physical, and spiritual, and I believe that they will develop them, in lines parallel and distinct, to a great future. But I do not believe that these colored citizens of ours care to follow the leadership of what I regard as a godless group of men.

You will have noticed, sir, that it is only the godless men who will play the part of God. The godless man has utter contempt for his fellow humans, and complete confidence in the infallibility of his own judgment and in the complete propriety of imposing his will on his neighbors. I do not believe that the efforts made by this little group

will frighten American politicians into thinking that they can only win the colored vote by following the dictates of these leaders of pressure groups.

You will recall that during the past 20 years there have appeared on the American scene certain characters, self-styled as leaders of labor. Some of these have boasted of access to Governors' mansions and to the White House, and I have not seen these claims refuted. Recently, in this spring, one of these self-styled labor leaders ran into trouble. The result was that the facade which had protected him was pulled away, and what did we see behind it?

We saw behind the rank and file of American workers regarding their gangster leaders with a mixture of fear and hatred. We saw that. We saw the predicament that they were in arising because of the unholy alliance between these irresponsible self-styled leaders of labor and venal members of both the State and Federal Governments, executive, legislative, and judicial.

I want to say, sir, in my opinion Mr. David Beck has greater warranty to claim to speak for American labor than the leaders of these pressure groups have to claim the authority to talk for our fellow citizens of the colored race. This group, of course, has a facade. All evil men have facades. The facade is well studded with members from the pulpit and from the classroom. It brings to mind the words of an old friend of mine, the late Albert J. Nock, who said:

May the Lord deliver us from the good intentions of those men and women with first-rate sympathies and third-rate minds.

What tragedy has been brought to our country by these well-intentioned, fuzzy-minded dupes.

I will bring my statement to a close very briefly, Mr. Chairman, but first I want to go back to an instance that occurred in the winter of 1954 at the time that the Bricker amendment was being debated in the Senate. I participated in a discussion at the National Republican Club of New York City on this subject.

At that time, as I have stated before, it became apparent that the Chief Executive was going to scuttle the Bricker amendment, and I recall having stated that winter evening that the Eisenhower administration, in my opinion, was an administration which could, on occasion, in the spirit of jest or desperation, be referred to as Republican.

At that time the National Republican Club, I would say, was infested by those Republicans who today might be termed "modern," so that you can imagine that the applause which greeted my words was not thunderous. I stated during the course of that evening, sir—and this is very relevant—that I did not want this United Nations—and I said this United Nations; I was not referring to a United Nations, some possible United Nations that some day might be represented by God-fearing nations, where our own representatives would represent our interests and protect our sovereignty—no, I was talking about this United Nations, teeming with enemies and spies and born in treason, and I said I want the Bricker amendment because I do not want to see this United Nations legislating for the American people—men, women, and children. And then I asked a question.

I said:

If I say that I want American laws for Americans made by Americans in America, am I an isolationist? If that spells isolationist, then print the word in large letters and I will wear it proudly on my breast.

Now, I thought that I had made a rather oratorical sally and I thought particularly that it was unassailable. But when I sat down, my opponent of the evening rose and called me an isolationist.

Now, I bring that incident up today, Mr. Chairman, not because my opponent that evening is presently the distinguished Senator from New York sitting to your right. I assure you and I assure him that that is pure coincidence. I brought this instance up for two purposes.

In the first place, not during the course of that debate, nor before, nor after, nor at any time, have I ever heard any opponent of the Bricker amendment complain about the undemocratic provision of the American Constitution which requires a two-thirds vote to approve the Bricker amendment. That reminds you of those subversive characters who would tear up every provision of the American Constitution except one, the fifth amendment.

The second reason that I brought this up was—and in this brief time I will have to curtail my presentation—that I want to suggest that the Senators consider whether the forces at work here today demanding curtailment of freedom of speech in the Senate are not the same as those forces which insisted upon leaving a loophole in the Constitution where legislation could be forced upon the American people other than in accordance with constitutional procedures, particularly by foreign bodies to which our sovereignty is expected to be extended.

Now, it is one thing to destroy States rights and to bring all of the power of our Government into Washington. That is bad enough. But consider the enormity if, instead of vesting the sovereignty in Washington, we take it to the East River, we take it to some alien world government. Thing of the enormity of that.

And in my limited time I suggest that every Senator should individually examine that question and answer: Is this or is this not the case? Are these forces identical?

Now, it will be for each Senator individually to decide that fact and to decide what importance, if any he attributes to it. As far as I am concerned, once I see the arrogant men attempting to push us into world government, I say, "Pause and listen to the credo of one American. The country to which I owe allegiance is a sovereign nation under God and under one flag, the Stars and Stripes. I owe and I will recognize no allegiance to any debased segment of a godless one-world government." I have never consented to such debasement.

The American people have never consented. And may God forbid that the Supreme Court of the United States should ever dare to hold that the representatives of the American people have ever consented to such debasement.

I will close that phase of my statement, sir, by a little prophecy. The first Boston Tea Party was aimed at tyranny from without. I say, that a second Boston Tea Party may very well be aimed at treachery from within.

In conclusion, Mr. Chairman, I want to say that the Senate of the United States represents to me a tower of strength, a symbol in the world in which I choose to live. The world in which I choose to live is a world of terraces, where those who wish may dwell in the valley, and

those who wish may climb to any heights within their aspirations and their abilities—and the heights are limitless, intellectually, spiritually, and materially. And I am not sufficiently naive to be told that I cannot climb except by trampling on the faces of my neighbors. I know that the higher I climb the greater value I will be to my God, to my country, and to my fellow human beings.

I regard this world, sir, as under dire peril from a tide of atheistic, international collectivism. I see this tide sweeping down over these terraces—not just sweeping away millions of Americans that have climbed to merited heights, because that might be a matter of 1 or 2 generations—but I see this tidal wave threatening the very terraces that have been raised through centuries of building into the sun. And I regard the United States Senate as one of the last strongholds in a desperate struggle to prevent that tidal wave from inundating all of us.

And, therefore, I urge that the Senate of the United States give the proper treatment to every one of these proposals for the limitation of debate in the Senate and that proper treatment in my opinion, sir, is to deposit them in the closest wastebasket.

That is all I have to say.

Senator TALMADGE. Any questions?

Senator JAVITS. No, thank you.

Senator TALMADGE. We thank you very much for appearing, Mr. Montgomery, and for your very forthright statement.

The next witness is Mr. Edgar C. Bundy, president of the Abraham Lincoln National Republican Club, Wheaton, Ill.

STATEMENT OF EDGAR C. BUNDY, PRESIDENT, ABRAHAM LINCOLN NATIONAL REPUBLICAN CLUB, WHEATON, ILL.

Mr. BUNDY. Mr. Chairman, realizing the hour is late, I have a short statement and I believe that it will just take a few minutes. I ask your indulgence for this statement, and I might say that although I reside in Illinois, I was born a Connecticut Yankee, lived in New York City and in other States in the Union, spent 1 year in your State of Georgia while going to school.

Honorable members of the special subcommittee, my name is Edgar C. Bundy, resident of 1407 Hill Avenue, Wheaton, Ill., and I am appearing before this committee today as president of the Abraham Lincoln National Republican Club, Chicago, Ill., as a spokesman in behalf of the membership of this organization which resides in 47 States and Alaska, to speak in opposition to any proposal to limit Senate debate which might change or modify the present Senate rule XXII.

The headquarters of our organization in Chicago, upon learning of the intended introduction of proposed changes in Senate rule XXII, sent out a general letter to our members urging them to express their opinion on these proposed changes. Every reply received in our headquarters was in definite opposition to any change in the present rule XXII. I am, therefore, appearing as spokesman for the club at this present hearing.

The United States Senate is one of the last free bodies in a world which is collapsing around us and in which world freedom of expression is being severely limited or entirely crushed.

Every piece of legislation introduced into the Senate of the United States which might affect the future of our Republic, or any sovereign State of that Republic, should be thoroughly examined openly before the people with no restriction placed upon that examination; for, after it is passed, by simple majority vote, it may prove far more difficult to undo, if harmful effects should result from the same when it becomes law.

We are in too much of a rush today to get things done. In this push-button, streamlined, jet age we scarcely take time to live any more let alone examine measures thoroughly which may affect the last semblance of freedom on the face of the earth. We need to slow down and reexamine whither we are bound.

This representative Government of ours is being pressurized by highly vocal and well-financed minority groups to change its methods of doing things—methods which have proved themselves to be in the best interests of the Nation as a whole through many decades of trial; and experiments.

Year after year, since the first Senate met in 1789, individuals in this body have tried to introduce changes in Senate rules to limit full and free discussion, oftentimes in the form of gag rules. But, our Senators have steadfastly refused to adopt such restrictive measures with the exception of the present required two-thirds cloture rule passed in 1917. Why, might we ask, a two-thirds rule? Perhaps this can best be answered by stating that history proves that the majority is not always in the right.

We hear a lot of arguments advanced to the effect that small minorities in the Senate can obstruct the will of the majority, and that therefore this right of the minority must be taken away. This is contrary to the United States Constitution itself. Our form of government was never set up on the basis of stifling the expression of minorities, even by a majority of one.

If we consult the proceedings of the United States Senate, as a continuing body from 1789 until the present day, we will find that the only time the filibuster was used was on some measure against which there was strong minority opinion and a definite basis for opposition. Out of a total of 36 measures against which the filibuster was used, only 11 failed of passage (some of these were the same bills or similar ones introduced over a period of time) and the other 25 were eventually passed, usually after being modified by the elimination of potentially dangerous provisions, or by adding to them features which would benefit particular States or areas of the Nation. That is a pretty good record in the history of American legislation.

Granted that there may have been some inequities resulting from the use of the filibuster in connection with the 11 bills which did not pass, is that any reason to burn the proverbial "house" down in order to destroy a few "rats" in the basement?

It is amazing, to say the least, how opponents of the present two-thirds cloture rule, while demanding a change from two-thirds to a simple majority, conveniently ignore the fact a two-thirds vote of both Houses of the Congress is required to override a minority of one; namely, the veto of the President of the United States; and, a three-quarter vote of all the sovereign States is required to ratify a constitutional amendment.

If the basis for the arguments presented over a period of years by those in favor of a simple majority as a means for closing debate is followed to its logical conclusion, then the President of the United States could be classified as an obstructionist to the will of the majority, and at least one-fourth of the States also constituted an obstruction to the will of the majority. These exponents of majority rule, in order to be consistent in their thinking, should ask that a Presidential veto be overridden by a simple majority of both Houses, and that a constitutional amendment be ratified by 25 States instead of by 36.

It would be well to recall at this point the words of the distinguished Senator John C. Calhoun, when on July 12, 1848, he stated concerning Senator Clay's proposal to introduce the "previous question" in order to limit debate, as follows:

There never had been a body in this, or any other country, in which, for such a length of time, so much dignity and decorum of debate had been maintained.

Despite the fact that there have been what might be classified as exceptions to the usual decorous procedure of the Senate at times in the life of this body, Senator Calhoun's statement is certainly applicable to the years since 1848 as much as to those prior to that date.

Again, in 1881, when a resolution was introduced to amend the Anthony rule and was objected to on the grounds that it was actually a form of introducing the use of "the previous question," Senator Edmunds made a profound observation which could well be taken to heart today by those who propose to stifle unlimited and free debate by changing Senate rule XXII:

I would rather not a single bill shall pass between now and the 4th of March than to introduce into this body, which is the only one where there is free debate, and the only one which can under its rules discuss fully. I think it is of greater importance to the public interest in the long run and in the short run that every bill on your calendar should fall than that any Senator should be cut off from the right of expressing his opinion upon every measure that is to be voted upon here.

I, for one, as an American citizen, and an intelligence officer in the United States Air Force Reserve, who have seen with my own eyes the suppression of free discussion in Juan Peron's Argentina—and Mr. Chairman, I could go into that at length if we had the time, when I saw how he packed his own people in the Senate, put his own people in the court, and the common people had no recourse whatsoever, and only through violent revolution was that overcome—in Communist China when I served with General Chenault's 14th Air Force, and in Europe, agree with Senator Edmunds' statement wholeheartedly.

If minority rights are to be preserved, they should be preserved in the Senate of the United States first of all, as such minorities consist of men and women who are duly elected to this august body by majorities in their own sovereign States. They are directly responsible to the will of these people.

It would be a direct slap in the face to these majorities in the States to tell their elected representatives in the Senate that they will not be permitted to speak as long as they desire on any given measure. If these particular Senators are in the wrong, then it is up to the people who send them to Washington to correct that wrong, and it is not up to the Senators from other States to draw such a conclusion. The ballot box is the finest free weapon we have left for correcting any abuse of senatorial privileges.

It is interesting to note that, since the first motion to invoke the cloture rule was introduced in the United States Senate on November 15, 1910, the Senate itself voted in favor of that motion only 4 times out of a total of 22 times that it was made.

This proves beyond a shadow of a doubt that the Senate itself, by substantial vote margins, was in favor of unlimited debate on 18 of the 22 measures before it. In each of the 18 instances a substantial number ranging from 27 to 77 opposed the limitation of debate.

In the light of these historical facts, we can only ask: Why are these proposals to limit debate continually presented before the Senate Rules Committee and its subcommittees? History is continually repeating itself, but the tragedy is that we do not seem to learn the lesson of history until it is too late. It is my opinion, after having examined the influences brought to bear on once-free nations in the process of turning them over to totalitarian regimes, that freedom of expression, whether oral or written, has always been stifled first before the country was captured by a dictator or totalitarian regime.

It is a singular fact that the Senate of the United States has passed a higher percentage of bills since its inception, without majority cloture, than the House of Representatives has passed with such a cloture rule.

The Senate is known to be the more deliberative of the two bodies of the Congress. I do not believe that the American people want this change through a speedup campaign, which would surely result if the present Senate rule XXII were changed from two-thirds to a chance majority.

Some have advanced the idea that the filibuster as used in the United States Senate causes adverse criticism of our Government in foreign countries—I think Mr. Reuther tried to make quite a point of that this morning—especially on the part of foreign governmental assemblies.

I think it is about time that we stop paying attention to the criticisms of people who have been receiving continuous handouts from the American taxpayers for 10, these many years, and from governments which have various conceptions of justice and freedom which are alien to traditional American constitutional concepts.

I have traveled on every continent in this world. I have served this Government on every continent of this world. And, if I were to take the time, Senator Talmadge, this morning to refute the statements which Mr. Reuther made in regard to India and other places that he has visited, we would be here for many days to come.

I, too, have talked to thousands of these people. I have talked to the leaders of these countries, and I can say that the worst discrimination of any kind in the world and the greatest inequalities are found in the very countries which Mr. Reuther mentioned here this morning as criticizing the Government of the United States, and, with all of our handouts we have made to these countries, these countries have not improved the social conditions there.

They have the extreme rich and the extreme poor, and a far greater differentiation between classes in those countries than we have in the United States of America.

Our country has existed as a free republic because our people have enjoyed the freedoms guaranteed to them in the great documents written by wise Founding Fathers. Let us not send this Nation down the road which decadent foreign nations have already traveled by re-

stricting full and free debate on the part of our United States Senators, whom we send to Washington for the purpose of representing us and maintaining a position on any measure which is in accordance with the views of the constituency they are representing.

Thank you very much for this opportunity of presenting these views to the special subcommittee of the Committee on Rules and Administration.

Senator JAVITS. Thank you, Mr. Bundy.

Senator TALMADGE. Mr. Bundy, we appreciate your very fine statement.

The next hearing will be July 2, at 10 a. m.

There are a number of insertions for the record. The first one is for the American Federation of Labor and Congress of Industrial Organizations, Mr. Biemiller, furnishing certain information I requested.

(Inserted in the testimony of June 24, 1957, at p. 80.)

Senator TALMADGE. The second is a petition from St. Louis, Mo. (See appendix, exhibit 4.)

Senator TALMADGE. The third is a letter from the Sons of Union Veterans of the Civil War.

(See appendix, exhibit 2.)

Senator TALMADGE. Here is an individual letter from Wheeling, W. Va.

(See appendix, exhibit 3.)

Senator TALMADGE. Next is a letter from the Banner Council, No. 67, of the Sons and Daughters of Liberty, Inwood, Long Island, N. Y.

(See appendix, exhibit 2.)

Senator TALMADGE. We also have a statement to be printed in the record from Dean Clarence Manion of South Bend, Ind.

(See appendix, exhibit 2.)

Senator TALMADGE. That is all the insertions at this time.

I believe that completes the hearing at this point. If you do not have anything to place in the record, we stand in adjournment until July 2, at 10 a. m.

(Whereupon, at 1:25 p. m., the hearing adjourned, to reconvene on Tuesday, July 2, 1957, at 10 a. m.)

PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE

TUESDAY, JULY 2, 1957

UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10:45 a. m., in room 155, Senate Office Building, Senator Herman E. Talmadge (chairman of the subcommittee) presiding.

Present: Senators Talmadge (presiding) and Javits.

Also present: Langdon West, special counsel to the subcommittee; Darrell St. Claire, professional staff member; Robert S. McCain, professional staff member; and Sidney Kelley, Jr., administrative assistant to Senator Javits.

Senator TALMADGE. The subcommittee will come to order.

The first witness on the agenda is Mrs. John Howland Snow, president, National Association of Pro America, New Canaan, Conn.

Mrs. Snow, please sit here and proceed when you are ready.

STATEMENT OF MRS. JOHN HOWLAND SNOW, PRESIDENT, NA- TIONAL ASSOCIATION OF PRO AMERICA, NEW CANAAN, CONN.

Mrs. SNOW. Mr. Chairman and members of the subcommittee hearing testimony on proposed amendments to Senate rule XXII, I am appearing here on behalf of the board of directors of the National Association of Pro America to oppose any amendment to Senate rule XXII which would limit floor debate.

We oppose limitation of debate on any specific question or legislation except, as presently provided in the rules, upon an affirmative vote of two-thirds of the membership of the Senate. Our opposition is based upon principle, and not upon the anticipation of debate or vote upon any particular or specific legislation introduced or pending before either of the Houses of Congress.

Insofar as my research has revealed, the United States Senate is the only deliberative legislative body in the world today which has unlimited debate, and the freedom of its Members to express views which may happen to be minority views—with resultant opportunity for the sovereign people to become informed about legislation, gives our Senate one of its greatest strengths. It is this opportunity to prevent precipitous and not fully considered action which lends to our Senate the prestige it has gained for protecting each segment of our population at all times.

Our Founding Fathers well knew that it was essential for us to have a body such as this Senate, and in contrast to our House of Representatives provided that its Members have longer tenure of office, a change of but one-third of its membership in each biennium, graver attitudes and, as a whole, longer experience—while still being responsible to the electorate. This gave a balanced stability to our two Houses, and we believe that the full and unlimited debate, peculiar to this body, is a priceless factor in that balance and in that stability. And equally, it is important and necessary that this particular body have its rules so arranged that any impetuous or occasional hasty decision may be forestalled, and that should any Member of the Senate feel that if a proposed action were sufficiently understood, the vote would or could be different, he may with the consent of his colleagues explain and explore all the avenues and evidence to insure such understanding.

Believing wholeheartedly in representative processes, we, the National Association of Pro America, hold firmly to the wisdom and principle of complete freedom of discussion, not to be limited unless and until two-thirds of the Senate agree that debate has been sufficiently prolonged and adequately informative that it should be terminated for the purpose of voting; and that no legislation, however much subjected to hearings or debate in its assigned committee, should be brought out on the floor with debate of 96 Senators "limited under the rule."

This may be proper in another body, where the large membership alone requires procedures not consonant with a body composed of no more than two spokesmen for each State; the Senate must, we feel, guard its peculiar procedures, which if not retained, could come to make of it little more than a smaller, but second, House.

We know, as the distinguished Senators know, that a majority is by no means always right; but we believe, as we are sure you believe, that an informed majority is usually right, and we are ready to see our country's destiny in the hands of an informed two-thirds membership of the Senate.

The National Association of Pro America is more than willing on occasion to see the price paid, the time lag which must be the inevitable result, in order to preserve untrammelled the right of unrestricted debate which distinguishes the Senate of these United States from every other deliberative body in the world.

There have been, and no doubt will be, abuses of this right of unlimited debate. We of Pro America recognize, as do you Members of the Senate, that there are disadvantages in free debate equally as there are disadvantages inherent in proposals of limited debate. We ask to point out, however, that the disadvantages inherent in limitation other than that presently in effect may include the element of danger, as well; and we think they do. The danger will be disavowed, on the ground that it would never eventuate. We believe, however, it to be a dictate of wisdom that policy should not be amended in such a way as to, by such alteration, establish a principle which may at some time unforeseen make possible a situation of "clear and present danger."

The great beneficiary of free debate is the momentary minority. There is a minority opinion on any and every given question which may come before the Senate or before another body. The personnel

of the minority changes with the matter under debate. And the opinions of the "unpopular minority" today may become the premises of "accepted majority" tomorrow. The right of free debate has been established for these natural and ever changing minorities.

The balanced stability between the two Houses of Congress rests in great measure upon the right of unlimited debate which for so long has been a principle of the one.

This principle is expressed in Senate rule XXII.

Senator TALMADGE. Any questions, Senator?

Senator JAVITS. I thought Mrs. Snow might like to spread on the record the number of members, dues paying, however you would describe them, of the organization.

Mrs. SNOW. I do not have the exact number of members. I have this statement which we have mimeographed giving the address and when it was founded. Its membership is composed of women interested in the field of politics and political education, and includes members of both large political parties and women who have never been members of any political party. Presently, its national office is in Connecticut because its office follows the president.

Senator JAVITS. But you do not have the number of your members.

Mrs. SNOW. I do not have that. It is in the neighborhood, Senator, of 7,500, I think. I am not sure of that because that is not my responsibility.

Senator JAVITS. Thank you.

Senator TALMADGE. Thank you very much for your fine statement, Mrs. Snow. We appreciate your being with us.

Mr. Deutsch, Senator Long wanted to come down and present you, but apparently he has been detained, so we will proceed, if you are ready.

STATEMENT OF EBERHARD P. DEUTSCH, ATTORNEY, NEW ORLEANS, LA.

Mr. DEUTSCH. Mr. Chairman, I am Eberhard P. Deutsch, of New Orleans. I was born in Cincinnati, Ohio, on October 31, 1897.

I completed my studies in law at the Tulane University of Louisiana at New Orleans in 1925, since which time I have been engaged in active practice in that city.

I served for 2½ years in the First World War, and for some 4½ years in the second, following the end of which I served further as principal legal adviser to Gen. Mark W. Clark in the military administration of Austria, and as member and chairman of the Allied Military Legal Directorate governing that country.

I am a member of the American Bar Association and of its standing committee on peace and law through United Nations. I am also a member of the Louisiana State and New Orleans bar associations; of the Association of the Bar of the City of New York; a director of the American Judicature Society; a member of the Maritime Law Association, of the American Society of International Law, of the International Law Association, of the Selden Society, and of other organizations in the same and related fields.

I was Special Assistant to the Attorney General of the United States in the appeal of the vast Texas City disaster litigation, believed to have been the largest litigation in the history of the world.

My practice has spread over large areas of constitutional law. I was counsel for Louisiana newspapers in the case in 1936, in which the Supreme Court of the United States held unanimously that a tax on advertising constituted an infringement of the freedom of the press.

I have acted as counsel for the American Civil Liberties Union in a number of cases involving impairment of civil rights.

Articles which I have written on constitutional law have appeared in leading law journals throughout the country, and have been cited by the Supreme Court of the United States and by other courts.

I am firmly convinced that the time-honored principle of free and unlimited debate in the United States Senate is a cardinal bastion among those set up for protection of our constitutional liberties.

In accord with this conviction, I oppose any modification of Senate rule XXII which would result in either an immediate or eventual cloture provision.

Nearly 2,500 years ago, Pericles, the great Athenian statesman, said that—

acts are foredoomed to failure when undertaken undiscussed.

It would seem to be no less a travesty on wisdom in the 20th century of the Christian era, to undertake to effect a self-imposed restraint on discussion in the Senate of the United States, concededly the ablest legislative body in the history of the world.

Inroads of cloture have already encroached on the Senate's original rule of unlimited debate; a principle which had steadfastly withstood the influence of the "hour rule" adopted by the House of Representatives in 1841.

First in 1917, and later in 1949, Senate rule XXII was amended by provisions from which the Senate's present cloture clause evolved. Because, however, it is so extremely difficult, as a practical matter, to bring this clause into play, Members of the Senate continue to have a right of essentially unlimited debate.

The case for unlimited debate in the Senate has its roots firmly planted in the tenets of our American philosophy of government. Complete freedom of legislative debate is actually one of the fundamental, inalienable rights secured by the Constitution.

It must be remembered that freedom of debate in the Senate is not a right appertaining to the individual Members of that body as such.

It is the right of "we, the people," to be assured that our representatives shall be free to discuss for us, the merits and demerits of measures pending or proposed, without regard to advocacy or opposition by majority or minority, without restriction, and without accountability except to the Chamber as a whole.

The exercise of this right serves to keep an intelligent electorate informed as to its own public affairs, and is thus allied to, and protects, our own unrestricted kindred rights of freedom of political thought and expression.

That this guardian of our other freedoms has long held its pre-eminent position among our fundamental liberties is manifest from the pages of our history. And, in the words of Mr. Justice Holmes, "a page of history is worth a volume of logic."

Even prior to adoption of our National Constitution, the bill of rights (art. XII) of the constitution of Massachusetts provided:

The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation to any accusation of prosecution, action or complaint, in any other court or place whatsoever.

The Articles of Confederation provided, in article V, clause 5, that—

freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress—

and this concept was carried over into clause 1 of section 6 of the first article of the Constitution of the United States.

It is true that freedom from accountability for what is said in parliamentary debate does not in terms entail a right to unlimited debate; but freedom of debate involves an absence of restriction on debate, a concept which has withstood assault throughout the history of the Senate of the United States.

In 1841, 4 days after the "hour rule" of cloture had been introduced in the House, Henry Clay sought to introduce it in the Senate. In support of his measure, he said:

Let our contests be contests of intellectuality, and not of physical force in seeing who could sit out the other or consume the most time in useless debate.

The Senate, however, refused to accede to Clay's appeal. The consensus of opinion in this body at that time, was expressed by Senator Rufus King, of Alabama, as follows, as summarized by Thomas Benton in *Thirty Years' View*, Appelton, New York, 1854-56, vol. two, p. 253:

Mr. King was truly sorry to see the honorable Senator so far forgetting what is due to the Senate, as to talk of coercing it by any possible abridgment of its free action. The freedom of debate has never yet been abridged in that body since the foundation of this Government. Was it fit or becoming, after 50 years of unrestrained liberty, to threaten it with a gag law? He could tell the Senator that, peaceable a man as he, Mr. King, was, whenever it was attempted to violate that sanctuary, he, for one, could resist that attempt even unto death.

Why have Americans, through the course of our history, come to feel so strongly about preserving free and unfettered debate in the upper Chamber of Congress? What primary concept has motivated their adherence to this principle which so plainly reveals the essential vitality to our Government which this freedom furnishes?

Succinctly stated, the rationale of the principle lies in the oft-repeated maxim that our American tenet of majority rule is qualified by the equally basic tenet that minorities have inviolable rights.

In a parliamentary system whose government is represented by its cabinet, the will of the majority is the supreme law of the land, unfettered by express constitutional restraints.

But the glory of such a constitutional system as our own lies in its enforceable guaranties of protection of minority rights and liberties.

It will be recalled that the Declaration of American Independence was grounded on the concept that governments are instituted among men to secure their inalienable rights and liberties, and that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.

When government threatens to destroy the rights of a minority, freedom of unlimited debate in the nation's highest legislative assembly is the surest and safest method by which to avoid all too frequently

futile appeals to the judiciary, or even the ever-present danger of appeals to force in revolution against tyranny.

On the occasion of his initial inaugural, Abraham Lincoln proclaimed:

If, by the mere force of numbers, a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution—certainly would if such a right were a vital one.

A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of free people.

In his first inaugural address, Thomas Jefferson said:

All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression.

The facet of this principle now under discussion was expressed with great clarity and force by Franklin L. Burdette in *Filibustering in the Senate*, Princeton, 1940:

The existence of filibustering in America today is evidence of a compromise between the authority of the many and the rights of the few. The principle of leadership is tinged with restraints. To the politician interested in practical use of the doctrine of inalienable rights, obstruction is a recourse of more than passing value. It is an effective if incalculable defense against oppression and overbearing authority. It may lie unused for years and then, in a moment of emergency, serve to good purpose in the cause of freedom. It may defeat the hand of greed or the ambition of irresponsible officials without resort to more violent means. It is not an unfamiliar cry that government is constituted to protect minorities against majorities. Indeed, most Americans would uphold the argument that there are rights of individuals which a majority must respect. Natural rights, inalienable and inherent, are still significant in American thought. The Constitution contains great guaranties of minority freedom from oppression. Many defenders of the filibuster argue that when a great constitutional guaranty is being trampled by an unheeding majority, the minority should obstruct with all the vigor at its command. It is contended that if a minority cannot be protected by parliamentary means, the forces restrained through majority pressure may well overturn the majority at the next election, or may burst out even in violence or revolution. Filibusters are almost always supported by minority opinion bearing at least some strength in the Nation, and if the issue is great enough that minority may never yield short of physical conflict. Filibustering is part of the democratic system to force compromise, the conserving possibility in great controversy.

The term "filibustering," as involving employment of, or capitalization on, this concept of protecting minority rights by freedom of debate in the Senate, has, at times, actually been drawn into some disrepute.

No doubt there have been abuses of this right in the history of the Senate; but abuses of a substantive right have never fairly been felt to detract from the virtue of the right itself.

When John Marshall was a member of the famed XYZ mission to France, he penned a brilliant letter to Talleyrand, in which the great constitutionalist said that the fact that liberty is sometimes carried to excess in America, is perhaps—

an evil inseparable from the good with which it is allied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn.

A filibuster is entirely defensible on the ground that the Member of the Senate who is speaking believes that the action which the majority threatens to take will result in erosion of minority rights.

Thus, in 1922, Senator Lee S. Overman of North Carolina summed up the unyielding position of the Democratic minority in a Senate filibuster, as follows:

When any considerable number of Senators are satisfied and conscientiously believe that any proposed legislation is unconstitutional, that it involves the integrity of the States and the liberties of the people, and if passed would undermine the very foundation stones of this Republic, I think they are fully justified in filibustering to prevent, if possible, a militant majority from rough-shodding over a strong minority.

Such justification has not infrequently been vindicated. In his able work, *The American Senate* (Knopf, New York, 1926), Lindsay Rogers points out that, for instance—

the Force bill was passed by a partisan majority in the House of Representatives. It was defeated by a Senate filibuster. That it was the better course for the measure to fail will not now, I think, be questioned; the will of a majority of the Senate may have been thwarted, but the minority was right.

Democratic government is often called government by discussion; and, as Ewbank and Auer point out in *Discussion and Debate: Tools of Democracy* (Appleton, New York, 1951):

Those who do not like this concept, who demand "action, not talk," forget that purposeful talk necessarily precedes intelligent action. Part of America's national heritage has been the principle of majority rule by persuasion rather than by force.

Curtailement of debate may perhaps be a physical necessity, as a practical matter, in the House of Representatives, because of the unwieldy size of the body. It is therefore all the more imperative that there be unrestricted freedom of debate in the Senate, which has become the only forum in our National Government in which unhurried consideration and, if necessary, long discussion, can be employed to perfect good laws, or prevent the passage of bad ones.

Burdette submits that the role of the Senate in revising bills passed in the House is one of particularly great importance; and that Senators are entrusted, in that regard, with responsibility for thorough analysis of legislation, and value the privilege and utility of unlimited speech to enable the presentation of every possible view.

The Senate is, of course, equal to this great task, and when it assumes that responsibility, achieves the senatorial stature which John Adams envisaged when he described it as—

a select council of statesmen, true to their duties, not ambitious of logomachy, and not making their honorable station subsidiary to other objects.

Opposition to unlimited debate in the Senate of the United States is apparently engendered, in some measure, by advocacy of expansion of executive, at the expense of legislative, authority in government.

Rogers strenuously contends that, in our constitutional form of government, with its ingenious system of checks and balances, the Executive needs an antagonist in the forum of public debate, and that without the Senate he would have none. He states:

As the much-vaunted separation of powers now exists, unrestricted debate in the Senate is the only check upon Presidential and party autocracy. The devices that the framers of the Constitution so meticulously set up would be ineffective without the safeguard of senatorial minority action. It is perfectly correct to say that in all foreign legislative systems debate can be restricted, but it is not proper to argue, by analogy, that there should, therefore, be restrictions in the Senate, for that body is *sui generis*. Foreign practice reads no lesson to the United States, for ours is practically the only system which

separates the powers of government, divides and confuses responsibility, and makes things move by the calendar rather than by popular will. Had we executive leadership of, or control by, the Legislature, the problem would be quite different. As things are, the justification of unrestricted debate in the Senate is the nature of our governmental system.

That persuasive argument by minorities may lead to the attainment of justice through conversion of majority views is a common phenomenon of our daily lives. It can find no more forceful illustration than in persuasion against cloture itself.

Thus, Senator Hoar, of Massachusetts, conceded frankly over half a century ago:

There was a time in my legislative career when I believed that the absence of a cloture rule in the Senate was criminal neglect, and that we should adopt a system of rules by which business could be conducted; but the logic of my long service has now convinced me that I was wrong in that contention. There is a virtue in unlimited debate, the philosophy of which cannot be detected upon a surface consideration.

I, accordingly, respectfully urge this subcommittee to report unfavorably on all proposed amendments to Senate rule XXII which seek to infringe on free and unlimited debate—a basic freedom which serves as one of the important tenets of our constitutional democracy.

Thank you.

Senator TALMADGE. Any questions, Senator?

Senator JAVITS. Mr. Deutsch, obviously, this is very thoroughly researched and I, therefore, wondered if there was any reason why, at page 3 of your statement, you said, "Inroads of cloture have already encroached on the Senate's original rule of unlimited debate," in view of the fact that apparently the consistent research in this committee shows that the original rule of the Senate up to 1806 allowed that the previous question was fully invoked to limit debate by a vote of the majority.

Mr. DEUTSCH. I confess I did not know that that was true up to that time.

Senator JAVITS. This is obviously so well researched.

Mr. DEUTSCH. It was intended to be. I am sorry. I did not know about that early procedure.

Senator TALMADGE. I might state for the record that the previous-question rule was in existence from 1789 to 1806. During that time it was invoked, I believe, four times.

Senator JAVITS. Very infrequently.

Senator TALMADGE. Thereafter, it was abandoned completely until the year 1917.

Mr. DEUTSCH. I did not realize that.

Senator TALMADGE. Any further questions?

Senator JAVITS. No.

Senator TALMADGE. Mr. Deutsch, we appreciate very much your coming and giving this valuable statement.

Senator Case is on the way and we want to hear him as soon as he arrives, and Mr. Bloch is the next witness following Senator Case.

Would you proceed, and let us interrupt you when he gets here, please?

I would like to say for the record that Mr. Bloch is here at my request and my personal invitation. He also officially represents the State of Georgia by direction of the Governor, Hon. Marvin Griffin.

He has been a longtime friend of mine. He has held a great many positions of honor, trust, and distinction bestowed at the hands of the people of the State of Georgia. He is immediate past chairman of the Judicial Council of Georgia. He is presently chairman of the educational committee of the board of regents of the university system of Georgia. He is a former president of the Georgia Bar Association. He is a former member of the General Assembly of Georgia. He is a veteran of World War I. He is one of the most able constitutional lawyers in our section and of the Nation, as well as a scholar of note.

I am proud to present him for this statement at this time.

You may proceed at will.

STATEMENT OF CHARLES J. BLOCH, MACON, GA.

Mr. BLOCH. Thank you, Senator. Thank you very much. I have a written statement; rather, an outline of a written statement which I desire to preface, particularly in the light of the fact that I follow the distinguished gentleman from Louisiana, Mr. Deutsch, and I understand that I am to be followed by another distinguished gentleman from New Orleans, Mr. Barr.

I was born in Louisiana. I was born in Baton Rouge, La., in 1893. My family moved to Macon, Ga., in 1901. I practiced law there since 1914. I have keen ties to Louisiana because my maternal grandfather was an officer in a Louisiana regiment, the 4th Louisiana Regiment, during the War Between the States. He was a native of Alsace. My father was a native of Alsace.

Senator TALMADGE. Will you suspend now, please, and let us hear Senator Case. The Senate convenes in 22 minutes, and I know the Senators with committee meetings and sessions at this date are very, very busy. (Mr. Bloch's testimony resumed on p. 207.)

Senator, Case, you may proceed at will. Mr. Bloch was testifying, and he very kindly consented to defer the remainder of his testimony in order that you might make your statement. We are happy to have you with us at this time.

STATEMENT OF HON. CLIFFORD P. CASE, A UNITED STATES SENATOR FROM THE STATE OF NEW JERSEY

Senator CASE. Thank you, Mr. Chairman, and it is very gracious of you. I shouldn't have asked that this be done if I realized you were doing it.

Mr. Chairman, I have a prepared statement, but it is quite short, and perhaps the best thing to do is go through it verbatim.

I appreciate the opportunity to appear before you in connection with these proposals pending for the amendment of rule XXII. My comments will be brief, because I know that the members of the subcommittee already are fully aware of the importance of the subject and its far-reaching implications.

My concern is with the correction of the situation which has so long obtained in which a handful of Senators can utterly frustrate the Senate's will, can prevent it from performing its fundamental constitutional duty to legislate.

The junior Senator from California, Mr. Kuchel, in the discussion of his subject at the opening of the current session of the 85th Con-

gress inserted in the Congressional Record for January 4, 1957, at page 122, a statement by Vice President Dawes on this subject. It may already have been inserted in the record of these proceedings, but if it hasn't, I should ask permission to insert it.

Senator TALMADGE. Without objection, it will be so ordered.

(The statement of former Vice President Dawes, already included in the record, may be found as part of Senator Kuchel's statement, on p. 103.)

Senator CASE. I appreciate the importance of full deliberation which the Senate rules provide for. And the importance of insuring that action on matters of great consequence should not be taken in haste. As Senator Flanders pointed out in the Senate debate last January, it is right that voting on such matters should be delayed in order to permit the development of full public understanding. He suggested with pertinence that the proposal by President Roosevelt for increasing the membership of the Supreme Court was a good example of such a matter.

And so, like Senator Flanders, I am not in favor of making cloture easy. But, like him also, I am not in favor of making it practically impossible.

It is said that whenever a substantial majority of the Senate wishes to act on anything it has the power to do so under our present rules. It is said that there are no instances of a successful filibuster permanently preventing a majority in the Senate from working its will except upon the so-called civil-rights issues. Even if this were true, the frustration of action on those issues alone would more than justify, indeed I suggest it makes imperative, the amendment of the Senate's rules.

But I know the committee has available the detailed historical studies which have been made on this question and there would be no point in my attempting to cover the same ground. I do suggest, however, that all of us know that the existence of the power of a small minority to tie the Senate into knots by the mere hint of the possibility of a filibuster has time and time again affected adversely the ability of the Senate to proceed in the ways in which a great majority of its Members desired.

Beyond that, I suggest that it is degrading beyond measure that in the mid-20th century, in a supposedly civilized era, one branch of the Nation's highest legislative body should be forced to beat down through physical exhaustion a filibuster by a small group of its Members before it can proceed to act.

The Senate of the United States is the only place I know of where the medieval practice of trial by ordeal still survives.

There are a number of different proposals for amendment of rule XXII pending before the subcommittee. I myself am a cosponsor of one of them. Senate Resolution 17, introduced on January 7 of this year.

I believe this resolution is the soundest of the various proposals. As you know, this resolution provides that, as in the present rule, 16 Senators may present a motion to bring debate to a close. The motion would lie over 1 full day and on the day thereafter, that is, 2 days after presentation, the motion would be put to a vote. The motion would carry only if two-thirds of the Senators present and voting voted in the affirmative. Thereafter, each Senator would be entitled to speak

for 1 hour on the pending business. The only change in the present rule here involved is the substitution of present and voting for "duly chosen and sworn."

In addition, Senate Resolution 17 would also provide for a vote on the cloture motion 15 days, excluding Sundays and legal holidays, after it has been presented. In this case the question could be decided affirmatively by a majority of the Senators duly chosen and sworn.

These seem to me reasonable provisions. They would amply safeguard the right to full discussion and debate. Even after passage of a cloture motion, which itself would involve a minimum of 2 days, there could be as much as 96 hours or 12 eight-hour days of debate. Moreover, in actual practice a much longer time for debate would be available. This is because in most cases, as I am sure the subcommittee realizes, 2 or even 3 clotures might have to be invoked to arrive at final action on a measure.

In this connection, the subcommittee might wish to consider incorporation in Senate Resolution 17 of a provision to allow any Senator to yield to any other Senator all or part of the hour to which the former is entitled following passage of a cloture motion. This is not, of course, permissible at present except by unanimous consent. Such a provision, which is included in Senate Resolution 21 by Senator Morse, would permit greater flexibility and full use of the time allowed under cloture.

All the pending resolutions provide that the present provision of section 3, rule XXII which prevents the application of subsection 2, the cloture provision, of rule XXII to proposals to change any of the Standing Rules of the Senate should be eliminated. Obviously this should be done.

As Senator Anderson pointed out at the beginning of this session, the effect of section 3 is that the Senate cannot amend the present cloture rule. It is impossible, I think, to improve upon Senator Anderson's comment:

I do not like everything in the provisions regarding cloture. But I am outraged by section 3 which provides that I may do nothing about it.

Mr. Chairman, the great majority of the Members of the Senate are outraged by this situation. Moreover, as Vice President Nixon clearly indicated in his opinion of January 4 of this year, which appears on pages 140 and 141 of the Congressional Record, that provision of section 3 is undoubtedly unconstitutional as having the effect of denying a majority of the Senate in a new Congress the right to adopt rules.

This leads me, Mr. Chairman, to my final point. Whatever recommendation the subcommittee may make I urge that this recommendation shall not in any way conflict or overrule the sound and statesmanlike opinion of the Vice President. Specifically, if the subcommittee should decide to recommend the adoption of Senate Resolution 30, sponsored by the majority and minority leaders and a number of other Members of the Senate, I urge that the words "as provided in these rules" be stricken from paragraph 2 of section 3 of that resolution. The full paragraph of that resolution reads as follows:

The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

I would suggest striking that clause "as provided in these rules."

Whether or not intended, the effect of these words, "as provided in these rules," would be to prevent the Senate at the beginning of a

session from altering or amending its rules by majority vote. This would, of course, be directly in conflict with the position taken by the Vice President, and I believe, with the Vice President, that it would be unconstitutional.

Above all, Mr. Chairman, I urge prompt action. This matter has been before the Senate and various of its committees for a long time and on many different occasions. It has been fully studied. I am sure it is fully understood. It would be a travesty if this latest effort to correct a situation which has so long been crying for correction should fail. The Senate must act before the close of the present session.

As a new member of this committee, I am deeply concerned that Senator Anderson's prophecy, made on the floor of the Senate of the 4th of January last, should not come to pass. You will remember that just before the vote on the motion to table Senator Anderson's motion to proceed to consideration of the Senate rules he stated:

The Senator from California will find that he can send his resolution to the Committee on Rules and Administration, but that after weeks and after months it will not see the light of day on the Senate floor.

Senator TALMADGE. Any questions?

Senator JAVITS. Senator Case, I apologize for not being here when you started. I have a distinguished constituent of mine here, United States attorney for eastern district of New York, Mr. Leonard Moore, whom I wanted to meet our chairman and to meet you.

I would like to ask only one question.

Does the Senate believe that it wouldn't be best to strike all of paragraph 2 of section 3 of Senate Resolution 80, on the ground that even the use of the words "the rules of the Senate shall continue from one Congress to the next" might by implication commit us to a ruling against Vice President upon the subject of this particular section of rule XXII?

Senator CASE. It may be that that should be done, although it had been my interpretation that the proposers of that resolution, acting as they did shortly after the Vice President's ruling, had thought that up to that point they were merely carrying his interpretation and his view as to the constitutionality of the matter into effect. But I wouldn't certainly quarrel with the elimination of the whole sentence because I don't think it is necessary.

Senator JAVITS. That is what I wondered. Does it serve any useful purpose? I am only talking about people like myself who are advocates of this position.

Senator CASE. I don't believe it is necessary. I think the acceptance of his position involves continuity of the Senate as a body for many purposes and the continuity of its rules subject to the right of the Senate at the beginning of the session to change by majority vote. These are, I think, sound and generally accepted and I don't think we need to say so in the rules.

Senator JAVITS. Thank you very much.

Senator TALMADGE. Thank you very much, Senator Case. We appreciate your appearing. We would be happy to have you sit with us at any of these hearings if you can conveniently do so.

Senator CASE. You are very gracious. I wish I could do so, but I have another committee meeting. Thank you so much, and again thank you, Mr. Bloch.

STATEMENT OF CHARLES J. BLOCH, MACON, GA.—Resumed

Senator TALMADGE. You may proceed at will now, Mr. Bloch.

Mr. BLOCH. For the benefit of Senator Javits who had to leave, just before I suspended I was saying, if I may repeat one thing, Senator, that my father was born in Alsace-Lorraine in 1862 at the time when it was French territory. When the Germans took over in 1870, he didn't believe in the tyranny of a Kaiser, Kaiser Wilhelm I, so as soon as he could, he left and came to this country in 1882 and settled in Louisiana.

He was the greatest believer in constitutional government I ever saw. He used to tell me about it. That is where I first learned about it, that the only hope of people like him who fled from tyranny was in constitutional government, and I might add this, too, to what the Senator said about me in his introduction, that while I have not the right to speak for the American Bar Association, and I am not pretending to speak, assuming to speak for the American Bar Association, I am chairman of the American Bar's committee on judicial selection, tenure, and compensation. I appear here as a representative of the Honorable Marvin Griffin, Governor of Georgia. I oppose the proposed amendments to rule XXII of the Standing Rules of the Senate pertaining to limitation of debate, and in my prepared notes there I want to interpolate what you will find attached to the prepared notes which is a statement that I just ran across recently which was made by Mr. Justice Frankfurter in a dissenting opinion in the case of *West Virginia State Board of Education v. Barnett* (319 U. S. at pp. 646 and 647). He said:

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and action of a lifetime. But, as judges we are neither Jew nor Gentile, neither Catholic nor apostle. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard. The duty of a judge who must decide which of two claims before the Court shall prevail, that of a State to enact and enforce laws within its general competence or that of an individual to refuse obedience because of the demands of his conscience, is not that of the ordinary person. It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could in reason have enacted such a law.

I have examined Senate Resolutions 17, 19, 21, 28, 29, 30, and 32.

I have more closely examined Senate Resolutions 17 and 30 than I have the others. Senate Resolution 17 does not show Senator Javits as one of those who submitted the resolution. However, the staff study of the Committee on Rules and Administration, which is a comparative analysis of the various resolutions, does show Senator Javits as a sponsor. Senate Resolution 30 has 39 Senators sponsoring it.

It would serve no purpose to discuss in detail the differences or likenesses in the various resolutions. In various forms, they would

accomplish the same result. Each and every one of them, if adopted, would limit debate in the greatest deliberative body the world has ever known, the Senate of the United States. The Constitution provides in article I, section 3, paragraph 1, that the Senate of the United States shall be composed of "two Senators from each State." While the 17th amendment has changed the method by which the States select their Senators, the Senate is still composed of two Senators from each State. The Senate never dies. It is a continuing body, eternal as far as mortal man can make it so. It is fitting that it should be such for here sit the representatives of the 48 sovereign States which, grouped together, are known as the United States of America.

Within the boundaries of the State of New York in 1950 there were nearly 15 million people. Rhode Island had less than a million. California had 10½ million inhabitants. Its neighbor, Nevada, less than 2 percent of that number, about 160,000. Pennsylvania, with its 10 million, is bordered by Delaware with about 300,000. To the northwest of Illinois with its approximately 9 million are the Dakotas with around 600,000 each.

But on the floor of the Senate, and its committee rooms, caucuses, and councils, the voice and vote of Nevada is equal to that of California; the voice and vote of Rhode Island, with its 1,248 square miles, is equal to that of Texas, with its 267,000 square miles.

It was so planned by those who drafted, proposed, and ratified the Constitution of the United States. In this Union of States no one State is more important than any other in that group of ambassadors which the States have sent to Washington, and who form the Senate of the United States. To insure that no one State might ever be outvoted by any other State in the Senate of the United States, the Constitution provides specifically in article V thereof that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

While it is not yet proposed that any one of the States be deprived of its equal suffrage in the Senate, it is now proposed by these bills that certain varying numbers of Senators can deprive other Senators, ambassadors from sovereign States, of their free and untrammelled right to place before the Senate and the people of the Nation their right to debate and discuss, as fully and freely as they deem best, problems which involve their very life.

Today, you seek to limit the voice of the States.

Tomorrow, will you seek to limit the vote of the States?

The gentleman who preceded me, Mr. Deutsch, quoted somewhat from a book, Burdette, *Filibustering in the Senate*, by the Princeton University Press. I happened to have had that book with me and, at that juncture in my notes, I have made a note to call attention to the fact that, on a filibuster or a debate in 1893, Henry Cabot Lodge contended that there is another right more sacred in a legislative body than the right of debate, and that is the right to vote.

Senator Lodge happened to have changed his mind later, as Mr. Deutsch pointed out, but on the next day Henry M. Teller, of Colorado, retorted:

I have not learned in anything I have read in the teachings of the fathers that the right to vote exceeds in sacredness the right to speak, and I want to say, with all deference to the Senator from Massachusetts, that the rule he has indicated is a rule that Napoleon the Third laid down for the French Assembly, that the right to vote was of more importance than the right to speak.

Teller went even further:

It is useless [he said] for anyone to say that the majority are capable of conducting things properly and will always conduct things properly. There is nothing in the world more wicked and cruel than the majority in government instituted and preserved to protect minorities against the majority. Majorities protect themselves.

We hear it said that, in this Government of ours, the strength of the majority shall prevail. Those who formed the United States did not so provide. One man in Nevada expressing himself through his Senators has the voice and vote of 200 men in New York.

North Dakota, South Dakota, Montana, Idaho, Wyoming, Vermont, Arizona, Delaware, Nevada, Maine, New Hampshire, New Mexico, Rhode Island, 13 States, each had a population of less than a million, according to the 1950 census. Will it next be attempted by Senators from New York, Illinois, Pennsylvania, and California to deprive those less populous States of their right to vote in the Senate on an equality with the more populous States?

Is the force and power of numbers to rule henceforth in this Nation? Is might to make right? Can you blame us for asking these questions when we hear men in high places say, in support of unconstitutional legislation, that the end justifies the means? That was the governmental foundation upon which the gas chambers of Dachau were built.

In a comparatively recent case, I interpolate, Senators, Justice Douglas referred to that phase in the case of *Ray v. Blair*, the Alabama case that arose in 1952 where the State of Alabama imposed upon candidates for presidential electors the pledge to support the nominees of the party, and it was attacked as being unconstitutional. The Supreme Court of the United States held it constitutional. Justice Douglas, in his dissent, page 235, said:

It is not for me, as a Judge, to pass upon the wisdom or righteousness of the political revolt this measure was designed to suppress. For me it is enough, be it ever so benevolent and virtuous, the end cannot justify these means.

One Senator from New York sponsored Senate Resolution 17; another seems to sponsor Senate Resolution 30. One Senator from Illinois sponsors Senate Resolution 17; another sponsors Senate Resolution 30. One Senator from Pennsylvania sponsors Senate Resolution 30; another, Senate Resolution 17; one Senator from California sponsors Senate Resolution 30. Is it mere coincidence that 7 of the 8 Senators from New York, Illinois, Pennsylvania, and California seek to hush the voices of their fellow Senators?

With this hue and cry of majority rule, what will come next?

Will you seek to change the Constitution so as to permit convictions in impeachment proceedings without the concurrence of two-thirds of the members present?

Will you seek to change the Constitution so as to provide that the Presidential veto of legislation may be overridden by less than two-thirds of each House of Congress? You know that the votes of Senators from just 17 States can prevent the passage of a bill over Presidential veto. Will you seek to change that in the shouting for majority rule?

Will you seek to change article V of the Constitution so that amendments may be proposed by less than two-thirds of both Houses of

Congress? Will you seek to change that same article so that amendments may be ratified by less than three-fourths of the States?

And, having done that, will you seek to change article IV, section 8, of the Constitution so as to permit new States to be formed or erected within the jurisdiction of another State without the consent of the legislature of that State?

The theory of rule by majority, by careful planning, can convert our form of constitutional government into one of which Washington and Jefferson and Adams and Lincoln and Wilson never dreamed.

Will you, pursuing that theory, change the Constitution so as to provide that less than two-thirds of the Senators present may suffice to ratify a treaty with a foreign nation?

I plead for "Freedom of debate." I plead that no death sentence be imposed upon that freedom, and upon the rights of the States of the Union to have their ambassadors debate and speak as freely and as lengthily as they desire.

Will the privileges of free speech be reserved only for those who seek to undermine our form of government? That freedom should be preserved for those who love America as well as for those who hate it.

Freedom of debate is a liberty guaranteed by the Constitution equal in importance to any other liberty. Tyranny thrives in a climate of suppressed debate. The adoption of the Declaration of Independence was openly debated. The Articles of Confederation were adopted in the Continental Congress after open and unrestricted debate. With these articles as a guide, the Constitution of the United States was prepared and proposed, without any limitation of debate. That debate lasted over a period of many, many months. After it was adopted by the Continental Congress it was proposed to the several States for ratification. In their legislatures and their conventions, the States openly and freely debated it for 9 months before 9 States ratified it. New York debated it so long that she was the third to the last State to ratify it.

And, so adopted and ratified, after full and unrestricted debate, it, with 2 amendments besides the Bill of Rights, stood the test of time for almost 80 years. The 14th amendment, constructions of which threaten our whole structure of constitutional government, was adopted under the most extreme character of cloture—cloture enforced by the bayonet.

The so-called liberal organizations who advocate restrictions of debate in the Senate of the United States evidently believe in a peculiar kind of freedom of speech—freedom of speech for themselves alone. If the theories of government they espouse are under attack in the Senate of the United States, they desire open, thorough, unlimited, and unrestricted debate. But, if haste is essential to the passage of measures they espouse, then there must be a restriction of debate.

I heard one of the most liberal lawyers of the South recently say in an address (May 19, 1957): "Society cannot survive without full discussion and debate." That statement was unique because it was the only theory of government I had ever heard him express with which I could wholeheartedly agree.

You seek to avoid filibusters. A filibuster is good or bad according to who is doing the talking and according to what its purpose is.

At page 34 of this Burdette book, Senator Sumner, of Massachusetts, seems to have been participating in a filibuster in 1865 as the 38th Congress neared its close.

Charles Sumner—

we know of him, we have heard of him in the South, Senator—

and a few others contrived dilatory tactics to defeat a resolution recognizing a reconstructed State government in Louisiana. Military officers under the direction of President Lincoln had held an election and arranged the adoption of a constitution, but Sumner was determined that only Congress would authorize the erection of a State government. And he was also insistent upon more liberal terms of Negro franchise.

When the resolution of approval became the business of the Senate, the Massachusetts Senate began a program of concerted opposition. He was not a solitary minority, however, and opponents of the proposition, both Democrats and Republicans joined in obstruction by long speeches and dilatory motion.

Lyman Trumbull, of Illinois, denounced the procedure as a determination to browbeat the Senate, but Sumner countered that he thought the measure dangerous and therefore that he was justified in all the instruments of parliamentary warfare.

Senator Elihu Root, of New York, made a similar statement which is shown at page 109 of this fine work in debating the ship purchase bill in 1915. The Republican position upon the bill was summed up by the eminent Elihu Root, who said:

A senator said to me a few days ago, you cannot afford to engage in a filibuster.

Senator Root replied:

Mr. President, I cannot afford to flinch from the duty which upon my oath and my conscience seems to lie before me.

Doubtless every Senator has seen the brochure on Limitation of Debate in the United States Senate prepared in December 1956 by the Library of Congress Reference Service. Therefore, it would be useless for me to enter into a detailed discussion of it. I do hope, though, that every Senator will study page 29 of it, headed "Later Action on 35 Filibustered Bills," and see if unrestricted debate is such a bad thing for our Nation. (See appendix, p. 307.)

Of these bills, over a period from 1865 to 1946, the only ones not passed were these:

- (a) The force bill in 1890-91;
- (b) The armed ship bill in 1917;
- (c) Antilynch bills, 1922, 1935, 1937;
- (d) Antipoll tax bills, 1942, 1944, 1946, 1948;
- (e) FEPC bill, 1946.

Strange it is that every one of these bills, save one, had as its object and purpose the embarrassment of the Southern States, their relegation to their 1865-70 status as conquered provinces.

And Mr. Burdette had something to say about those bills, too. I refer particularly to what he said with reference to the late Senator Norris, a great liberal Senator. Senator Norris spoke upon the necessity for full debate in connection with the armed ship bill in 1917. He said, and I quote from page 120:

Many bills were mulled upon by Congress during the last few days of the session and when anybody objected, when anybody thought it was his duty to find out what was being done with the taxpayers' money or what kind of statutes we were placing upon the books, the cry always came, you are filibustering.

The Senator from Nebraska would stand in the way of war hysteria. He would seek to hear the arguments, and if it came to filibustering, he proclaimed, to try to find out about something, to do the best you can when it all comes at once, and you cannot do much, then I am guilty of filibustering.

To substantiate his point that discussion should be thorough, he read from the doctoral dissertations of Woodrow Wilson's argument, the President himself:

It is the proper duty of a representative body—

Wilson had written—

to look diligently into every affair of government and to talk much about what it sees.

And in 1922, in the debate on the antilynch bills, Senator Overman, of North Carolina, summed up the unyielding position of the Democratic minority when he said:

When any considerable number of Senators are satisfied and conscientiously believe that any proposed legislation is unconstitutional, that it involves the integrity of the States and the liberties of the people, and if passed would undermine the very foundation stone of this Republic, I think they are fully justified in filibustering to prevent, if possible, a militant majority from roughshodding over a strong minority.

And at page 180 of that work, when the 1935 antilynch bills, so called, were being debated, this book points out at page 180 that when the Senate convened on a certain Monday, Hugo L. Black, of Alabama, and James F. Byrnes, of South Carolina, consumed the time. Southerners were adamant that the bill should never pass.

It seems a little strange to me at this time that they should have thought alike at that time.

And then with respect to the 1937 bill, Senator McNary, as the Republican leader, announced that he would vote against cloture:

All Republicans in the Senate save two [he stated] sincerely favored the bill. They are willing to remain here from sunrise to evening star and from evening star to sunrise in order to have the bill passed, but, Mr. President, I am not willing to give up the right of free speech and full, untrammelled opportunity for argument. That right is the last palladium. It is the last impregnable trench for those who may be oppressed or those who are about to be oppressed. It may be the last barrier to tyranny.

That was the Republican leader of the Senate in 1937. I believe Senator McNary was afterward a candidate for the Vice Presidency on the Republican ticket. That quotation is from page 196 of Mr. Burdette's book.

And strange it is, too, that almost every lawyer in the United States Senate, as a lawyer, or as a judge, would have not the slightest hesitancy in deciding that these bills exceeded the powers delegated to Congress by the sovereign States. Yet they are cited as examples for the need of restriction of debate. They really serve as outstanding examples of the need for unlimited debate and the survival of constitutional government.

We hear so much these days of "minority groups." Formerly this phrase had a distinct meaning. When we heard it uttered, we visualized certain racial groups or certain religious groups.

Now the phrase is somewhat more difficult to define. Personally, I think that the outstanding minority group in the country is that group which is striving for the perpetuation of constitutional govern-

ment. Today, the minority group in this country whose members need protection is composed of those who believe in a government under the Constitution of the United States as it was written, legally amended, and construed by judges trained in law and construed according to legal precedent, the established law of the land.

If by "minority group" is meant those who are of African descent rather than English or continental European, why do they desire to destroy law and the Constitution?

If by "minority group" is meant those who worship their God in a manner different from most of those who settled the Thirteen Original States, why do they desire to destroy established constitutional precedents?

When and if the phrase, "The end justifies the means," becomes the law of the land, they will be the first to feel its blunt force.

Government under a constitution, construed according to law and established, long-continued, legal principles is their only hope of survival. I may say our only hope of survival.

What "end" could possibly justify the abolition of jury trials?

What "end" could possibly justify the abandonment of principles of equity practice established as the law of the land more than 400 years ago in England, and continued in this America for more than 300 years?

What "end" could possibly justify jeopardizing rights which now seem established by adjudication and construction of the Constitution?

I mean simply this: The first amendment to the Constitution provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press. There is no provision in the original Constitution or in the Bill of Rights which prevents a State from making laws respecting an establishment of religion. There is no provision in the original Constitution or in the Bill of Rights which forbids a State to prohibit the free exercise of religion. There is nothing in the original Constitution which prevents a State from abridging the freedom of speech or of the press.

Long after the 14th amendment was adopted, the Supreme Court construed the provision in it that no State should deprive any person of life, liberty, or property without due process of law to mean that no State should deprive any person of the liberty of worship, speech, and of the press. By judicial construction, the word "liberty" was held to extend the prohibitions of the first amendment so as to restrict the States. In so holding, the Supreme Court evidently failed to consider that if the word "liberty" had that breadth of meaning, the first amendment was totally unnecessary. The fifth would have sufficed. If the doctrine of "the end justifies the means" is to be the new rule of constitutional construction; if precedents established in the decisions of jurists trained in the law are lightly to be swept aside upon the testimony of psychologists and articles in the New Yorker magazine (cf. case 107, October 1956, decided June 24, 1957, slipsheet page 6), then all "freedoms" rest upon a perilous base.

The case referred to is that of *Kingsley Books, Inc., Louis Finkelstein, Doing Business as Times Bookshop, et al. v. Peter Campbell Brown, Corporation Counsel of the City of New York*. There, a proceeding under section 22-a of the New York Code of Criminal Procedure, as amended in 1954, providing for a "limited injunctive rem-

edy" was upheld in a 5-to-4 decision. The opinions show quite clearly that, if appellants had requested a jury trial, or had attacked the statute in the lower court for failure to require a jury, it would have been invalid.

Will you deprive southerners—Americans of the South—a right which the court impliedly held to be that even of a purveyor of obscene books?

Are the rules of the Senate to be changed in order to pass a statute of that nature?

The document to which I have referred—Limitation on Debate in the United States Senate—on pages 23 and following gives 36 instances of outstanding Senate filibusters from 1841 to 1955.

A glance at the list shows that the filibuster is not merely an old southern custom. Perhaps the reason why the southern Senators have more often than others engaged in prolonged debate is that the South is the only section of the Nation against which legislation has been frequently specifically directed. But Senators from other sections, too, debate at length when they have what they think are reasons to debate.

I notice that, in 1914, Senator Burton, of Ohio (now Justice Burton)—I do not think that is the same Senator Burton. Let us strike out "(now Justice Burton)" there. I am not sure he is. I wouldn't want to make that statement definitely. It seems a little too long ago.

I notice that, in 1914, Senator Burton, of Ohio, "filibustered against a river and harbor bill for 12 hours." The armed-ship debate of 1917, and the World Court protocol debate of 1926 were not southern inspired. Neither was the lengthy talk of Senator Copeland, of New York, against the Isle of Pines Treaty in 1925.

I notice, too, that in 1950, Senator Malone filibustered against a conference report on the slot-machine bill. In 1953, during the prolonged debate on the so-called tidelands offshore bill, Senator Morse established a new record for the longest single speech. On April 24-25, he spoke for 22 hours and 26 minutes. Now, the Senator has introduced Senate Resolution 21, which is one of those pending before this committee.

It all depends upon whose ox is gored. We all know that, if unwarranted legislation were introduced adversely affecting any group of States, the Senators representing the States in that group would want to debate without limitation what they deemed injustices to their States sought by bills violative of the Constitution.

I would like to interpolate three instances of that which I found in this Burdette book yesterday evening coming up here, on page 108 of it.

Senator Jones of Washington was assisting in conducting a so-called Republican filibuster. He took the floor for a lengthy speech in which he admitted freely his purpose to filibuster. That practice, moreover, he boldly defended.

No important legislation [he asserted] no legislation of great benefit to the people of this country has ever been defeated by filibustering. Rather, only legislation which a great section of the country and perhaps a great number of Senators have believed most injurious and most dangerous has been defeated by filibustering.

And on page 110, discussing that same bill in 1915, Senator Burton of Ohio expressed his conviction that "there are three cases in which

a filibuster is not only justifiable but salutary." The first would arise, he thought, "when a vital question of constitutional right is involved"; the second "when the measure is evidently the result of crude or inconsiderate action"; and the third "when the Senate is convinced that because of some compulsion a 'vote' will not express the honest conviction of the Members."

I suggest, sirs, that the legislation to which these resolutions are really directed, the Brownell bill, has all three of those vices.

The 22 Senators from the 11 real Southern States are a "minority group." The other 74 Senators can outvote them. If they do, our Southern Senators may well say, "You are sounding the death knell of constitutional government. Do not think that the people of our States will suffer from that destruction alone. The bell tolls for you and yours, too."

Senator TALMADGE. Any questions, Senator?

Senator JAVITS. I don't want to ask any particular questions. I wondered whether that book was by Dr. Franklin L. Burdette.

Mr. BLOCH. I think so, sir. By Franklin L. Burdette.

Senator JAVITS. Now, would it interest you to know that Dr. Franklin L. Burdette appeared before this committee on June 25, 1957, and recommended the adoption of Senate Resolution 17, the very resolution you are testifying against?

Mr. BLOCH. Yes, but I might make it plain that I was not citing the opinions of Mr. Burdette. I know nothing about Mr. Burdette. My reason for using this book was that he quoted from the Congressional Record in quoting certain Senators of days gone by. I don't know Mr. Burdette and I don't mean to cite him, his views, as authority. I do cite as authority his quotations from the Congressional Record.

Senator JAVITS. Thank you. I didn't mean to in any way infer that you did otherwise.

Senator TALMADGE. Mr. Bloch, we appreciate very much your presentation here and your very fine statement, sir.

Senator JAVITS. Mr. Chairman, before we proceed to the next witness, I would like to advise the Chair that I would like at the Chair's convenience to have time for consideration of the question of closing these hearings and inviting witnesses after a certain date to submit written statements.

Senator TALMADGE. Do you want to do that now?

Senator JAVITS. I will do anything that the Chair desires.

Senator TALMADGE. Suppose we finish hearing the witnesses and then we can go into that at some length if you desire.

Mr. John U. Barr, please. Mr. John U. Barr of the Federation for Constitutional Government, New Orleans, La.

You may proceed at will, Mr. Barr. We are happy to have you with us.

STATEMENT OF JOHN U. BARR, FEDERATION FOR CONSTITUTIONAL GOVERNMENT, NEW ORLEANS, LA.

Mr. BARR. Thank you, Mr. Chairman, and Senator Javits and members of the committee. I appreciate very much the opportunity of appearing. I feel somewhat inconsequential following those bril-

liant statements made ahead of me, some of which, of course, are duplicated here and may be treated in a different way.

I appear before you today as chairman of the executive committee of the Federation for Constitutional Government.

We are a voluntary group, dedicated to do whatever we can to keep ourselves and our countrymen informed and alert to any damage, departure, or erosion of our God-given Constitution, which, in our opinion, was truly a divine revelation given to our Founding Fathers for the formation of the most perfect republic on the face of the earth.

Millions of words have been spoken and written pro and con on the subject of rule XXII of the United States Senate.

So few of our fellow citizens realize that during the few years after the birth of this Republic, and the adoption of unlimited debate in 1806, it had quickly become apparent that the safety of our infant Nation would, in the last resort, depend upon a calm, deliberate, and unshackled legislative body.

It should not be necessary for us to remind ourselves that, as a nation, we made our greatest strides during the 110 years of unlimited Senate debate.

There are still some living Senators, both in and out of office, who would hate to have to face (in the light of what later took place) the implications of the dire, but now ridiculous predictions they made unless rule XXII be amended or abolished.

Members of Congress, both Republican and Democratic, from Senate and House, from North and South are today worried about the decisions of our Supreme Court. I think that the time may be very near when the Congress, and particularly the Senate, will in some concrete manner show the Court that the legislative branch of our Government has not abdicated.

Still, less than 10 years ago, a living ex-Senator made the ridiculous plea for abolition of rule XXII on the theory that the Supreme Court would, and could, be trusted to take care of all "worthy minorities."

He was right in his own way, except for the fact that the people of his State repudiated him not very long afterward, because they felt that the ex-Senator had no mandate from them to consider the Commy Party of the United States as a worthy minority.

To balance this on the other hand, the late Senator McNary opposed any limitation of senatorial debate on the grounds, "I may want to talk some day, myself."

The most amazing fact stands out as one traces the words of those who, like McNary, have over the years defended the right to have the Senate remain a really great deliberative body.

Of the thousands of words spoken by the proponents of rule XXII on the floor of the Senate, it is impossible to find a single argument that was in conflict with the intent of either the Founders or Constitution of this Republic.

Many of the great statesmen of Europe, both in the 19th and 20th centuries, have spoken in praise and envy of the Senate of the United States. I think it was Gladstone who first said that, in our creation of an unshackled Senate, we had for the first time in history perfected a legislative body where even a political tyrant would find a barrier.

I always get a laugh at that picture of a mother, showing her young daughter the armless statue of Venus de Milo and the mother's warning to the child about biting her fingernails. I do not think it funny,

when I realize that many fine men in the Senate are willing to nibble away the strong arm of the Senate.

The adoption of rule XXII was a compromise and now again the opponents of rule XXII want to compromise the compromise. Where will this stop, what will be left for freemen to defend?

Is there any question in anyone's mind that the Senate was selected as the body where the smallest State shall have the same rights and powers of the largest; where any group of small States could protect and defend themselves against political domination by combinations of sister States.

Have we forgotten that Senators are the ambassadors of sovereign States to a creation of these sovereign States? We must stop this nibbling of senatorial power and dignity.

Many years ago Stalin told publisher Roy Howard:

The people of the Soviet Union will not use force to alter the governments of the surrounding states; the people of the surrounding states will do that themselves.

Are forces working to make that monster's prophecy come true in our land? This is the question both the Senate and the Supreme Court should now be asking themselves.

I am confident that there are no Communists in the United States Senate or Supreme Court. I am just as certain that there are Members of both bodies who refuse to recognize the horrible fate that certainly awaits us, at the end of these primrose paths of compromise and departure from the basic truths and principles of this Republic.

To those who would help destroy the deliberative power of our Senate, I respectfully urge that they mark well and remember the words of Palme Dutt, the British Marxist historian and doctor of political science, uttered earlier in this century:

If the sequence of events unfolds as the Communists plan and anticipate, and if these plans are carried into successful execution, the world or most of the world will indeed attain political unity before the close of the present century.

Is this the unity we seek?

Is it the unity that was sought after on the bloody streets of Budapest, Poznan, or East Berlin?

Can the enemies of either rule XXII, or the enemies of unlimited free senatorial debate, point out a single remaining free nation that would not willingly trade their lot for ours, take what we have, what we have achieved under our form of government in exchange for what they have to offer?

That we ourselves fail to understand the perils of these changes and compromises is sad to contemplate. We have softened. We have compromised, but at least it can be hoped that it is not too late and we can still turn the tide of political expediency and compromise back to what we were meant to be.

We cannot be of much help to a world half slave and half free, if we enslave ourselves by defaulting on our constitutional obligations to keep a strong legislative branch of government to curb the excesses of an ambitious or compromising executive, or judiciary.

Can the Congress, in truth, declare that "Marry in haste and repent at leisure" has become a shopworn admonition? For a Senator to court or marry this weakening of the Senate by a change in rule XXII will condemn the American people to untold years of agonizing

repentence. Where this evil would stop, nobody knows or could dare to predict.

"Stop, look and listen" has saved countless lives. To destroy the right of a Senate minority to have their opportunity to make the Senate refrain from haste and to "Stop, look and listen" can save the life of our Republic, when that occasion arises.

In 1937, when the Franklin Roosevelt court-packing plan started real senatorial spine stiffening, the words "spineless puppets" were often heard. First, to describe the judges Roosevelt was going to pack the court with, and then later the Members of the Senate Roosevelt was going to back if his purge revenge plan had succeeded. I now implore you to look long and hard at the prospect of allowing yourselves to degenerate into legislative, spineless puppets by voluntary surrender of your independence insurance as it is provided by Senate rule XXII.

Has our preoccupation with material success made us blind to the values of patient and honest cultivation of mind and character? We who have the remarkable record of leading the world in economic prosperity, also have the unenviable record of leading the world in reckless tampering with our freedom.

If our Republic fails to fulfill the high hopes of the men who founded it and sustained it in its days of weakness and trial, then the fault will be with us of the generation that has seemingly lost the inspiration of their ideals.

Chip and nibble away the powers of the Congress and then we go through the meaningless forms of democratic government in vain, if we have lost the sense and meaning of individual and collective responsibility, the cement that prevents freedom from crumbling into license.

That is why I have spoken in defense of rule XXII; it does help preserve your, and my sense of individual responsibility for the good of all the Nation.

Senator TALMADGE. Any questions, Senator?

Senator JAVITS. I just hope the witness will state for the record what is the Federation for Constitutional Government. Is it a membership organization?

Mr. BARR. It is not a membership organization. It is a group that has formed together by voluntary expression.

Senator JAVITS. Is it local in New Orleans?

Mr. BARR. No, sir. It has substantial support from every State in the Nation with the exception of two.

Senator JAVITS. Does it have dues-paying members? It has members?

Mr. BARR. It is not a membership organization.

Senator JAVITS. Thank you.

Mr. BARR. But it has expression of interests, not solicited but merely from our literature that we send out.

Senator TALMADGE. Thank you very much for appearing and making your statement.

That is the aye and nay call for the Senate. I understand we are to vote on the Austrian treaty. If it is satisfactory with you, we will recess for 20 minutes. Thank you for appearing.

(Recess.)

Senator TALMADGE. The subcommittee will come to order.

Senator JAVRS. I have a statement from a constituent in New York to go into the record. Howard Norman Mantel.

Senator TALMADGE. I have several insertions for the record at this point. A petition from St. Louis, Mo. Another petition from Miami, Fla. And several statements from organizations—3 from councils of the Sons and Daughters of Liberty; 1 from Pride of the Park Council, No. 15, of Farmington, N. J.; 1 from the Lafayette Council, No. 27 of Riverside, R. I.; and 1 from the State Council of Ohio, the American Education Association; the Anti-Communist League of America, Inc.; and a petition from Tallahassee, Fla. They will all be inserted in the record.

(The communications referred to above may be found in the appendix: Statements from organizations in exhibit 2, and petitions in exhibit 4.)

Senator TALMADGE. The next witness is Mr. John J. Gunther, legislative representative for Americans for Democratic Action.

You may proceed at will.

STATEMENT BY JOHN J. GUNTHER, AMERICANS FOR DEMOCRATIC ACTION

Mr. GUNTHER. I have a very short statement. I realize the Senate is in session, and I have no desire to detain you longer than to simply put our position into the record.

I am John J. Gunther, legislative representative of Americans for Democratic Action. I appear here today on behalf of ADA to urge that the practice of majority rule be restored in the United States Senate.

ADA has a long record of support for majority rule. Each convention of the organization since 1949 has adopted resolutions urging the Senate to amend its rule XXII to provide for majority cloture. We have on several previous occasions presented testimony before the Senate Committee on Rules and Administration, urging amendment of rule XXII to provide for majority cloture. We have appeared before the platform committees of the Democratic and Republican Parties in support of this proposition.

I might add there, Mr. Chairman, we have had some good fortune in appearing before the platform committees. Not only did we think we did some work in educating the public and the press and delegates, but, actually, the Democratic platform of 1952 and 1956 took notice of the fact that witnesses had appeared and urged that the rules be changed.

The filibuster stands as a constant threat to democratic procedure in America. Combine the filibuster with section 3 of rule XXII (which bars any debate limit on rules change) and the concept of the Senate as a continuing body with continuing rules, and you establish minority rule in the Senate. The protection of minority rights is no justification for such a grant of minority tyranny.

ADA supports Senate Resolution 17, a proposal introduced by Senators Douglas, Ives, and others to provide for a workable cloture rule. Under this proposal, two-thirds of those Senators present and voting could limit debate within 2 or 3 days, while a majority of those Senators "duly chosen and sworn" could limit debate after 15 days.

And section 3 of rule XXII would be repealed by the Douglas-Ives measure.

We want to make one thing clear: There is a difference between extended debate and the filibuster. Extended debate has as its purpose education and delay so as to permit the Senate and the country to become fully aware of what is before the Senate. The filibuster has only one purpose—to prevent a vote. We say “prevent a vote” rather than “delay a vote” because that is the fact. The Senate has been prevented from voting on civil-rights legislation by the filibuster. The Senate has never voted on a civil-rights bill on its merits since the filibuster became an institution just prior to American entrance into World War I.

We would like to see a rule which would permit cloture by a majority of those present and voting in the Senate.

I would say, members of the committee, that while ADA has supported majority rule, we do not urge a rule which would permit cloture by majority vote after 1 or 2 days. When we support cloture by majority vote, we don't care whether the vote is 1 month or 2 months after the debate starts. What we want is a vote somewhere down along the line at some point. We think it would be unrealistic to permit a couple of years of debate before a vote, because the Senate wouldn't be able to do any other work. Our plea is: Let the Senate vote.

If there are the votes in your subcommittee and committee for cloture by majority vote, we hope such will be reported to the Senate. However, we believe that the Douglas-Ives proposal, which permits a majority of the entire membership of the Senate to limit debate, is a reasonable step in the right direction.

Senator JAVITS. Let me understand you. When you say 60, 90, and so forth, you are talking about a majority of those present and voting?

Mr. GUNTHER. That is right.

Senator JAVITS. But you are testifying in precise support of Senate Resolution 17, the Douglas-Ives resolution.

Mr. GUNTHER. That is correct, Senator. That would permit 2 weeks' debate after the cloture was introduced and an hour for each Senator, and we would have no objection to the proposal made by Senator Case to permit Senators to yield that time.

Senator JAVITS. That is right.

Mr. GUNTHER. Our real purpose is to suggest at some point voting, not a limitation on debate, but at some point voting.

We oppose Senate Resolution 30, the Johnson-Knowland proposal, for three reasons. One, the change in the cloture rule from two-thirds of the entire membership to two-thirds of those present and voting would not be a significant step forward. Second, because it would attempt to negate the effect of Vice-President Nixon's opinion of last January and impose upon all future Senates the noxious concept that a majority in the Senate cannot exercise the explicit constitutional right to make the rules for that body. And, third, because it would retain section 3 of rule XXII.

Great progress has been made toward gaining majority rule in the Senate. The vote this past January in support of Senator Anderson's motion to proceed to the consideration of Senate rules was most encouraging. There seems to be little doubt but that in January of 1959 or in January of 1961 the Senate will exercise its constitutional right

to adopt rules by majority vote. We don't know at that point, Senator, whether they will adopt the rule we want, but we think they will at least exercise the right that we believe they have to adopt some rules.

The Johnson-Knowland proposal appears to us to be an attempt to head off the Senate exercise of majority rule by making a paper compromise on cloture and binding all present Members of the Senate at least morally from exercising their rights under the Constitution at the opening of each new Senate.

As we have pointed out, ADA has been urging amendment of rule XXII since 1949. We still support its amendment. However, we respectfully urge that the Senate, in an attempt to curb the filibuster, not fall into the trap which we see in the Johnson-Knowland proposal to perpetuate minority rule.

We would hope, Mr. Chairman, that while we would like to see action as soon as possible on a change in the rules, we would hope that this change in the rules would not be considered simultaneously on the floor with the civil-rights bill. We would think that this would only confuse the issue. We would rather see the civil-rights bill debated using all the rules of the Senate that are there to try to get it through. We think that the rules matter can be considered separately and we hope that the two don't become so intermixed that the people of the country won't know what is going on in the United States Senate.

Thank you very much, Mr. Chairman.

Senator TALMADGE. Any questions?

Senator JAVITS. No questions.

Senator TALMADGE. Thank you very much, Mr. Gunther. We appreciate your appearing.

We will go into executive session at this point.

(Whereupon, at 12:15 p. m., the committee went into executive session.)

PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE

TUESDAY, JULY 9, 1957

UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m., in room 155, Senate Office Building, Senator Herman E. Talmadge, chairman of the subcommittee, presiding.

Present: Senators Talmadge and Javits.

Also present: Langdon West, special counsel to the subcommittee; Darrell St. Claire, professional staff member; Robert S. McCain, professional staff member; and Sidney Kelley, Jr., administrative assistant to Senator Javits.

Senator TALMADGE. The subcommittee will come to order.

There are two or more Senators coming to testify this morning and the distinguished Senator from Mississippi, Mr. Stennis, is here to present one of the witnesses.

If you are ready, Senator Stennis, we will proceed and let Mr. Campbell be the first witness.

Senator STENNIS. Well, thank you very much, Mr. Chairman.

Gentlemen of the committee, I came to hear and I am honored to introduce to this committee, Boyd Campbell, of Jackson, Miss.

Mr. Campbell is a man of very broad experience and, as I just told Senator Javits, is a man filled with unselfish patriotism. He has a great deal of humanity and continual interest in government, has given unsparingly of his time in civic affairs. He has long been active with the Chamber of Commerce of the United States, has had challenging officeholding responsibilities there, with two of those present representing in that group the small-business men.

I am not here to praise him but to hear him, but I am delighted that he could come and would come. The fact that he is here is just evidence of his general interest in all phases of government. I am very happy to present him to you.

Senator TALMADGE. Thank you very much, Senator Stennis.

Mr. Campbell, we are very happy to have you with us, and you may proceed at will.

STATEMENT OF BOYD CAMPBELL, JACKSON, MISS. (INTRODUCED BY HON. JOHN STENNIS, A UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI)

Mr. CAMPBELL. Gentlemen, my name is Boyd Campbell. I am a small-business man from Jackson, Miss. I appear before you as an

individual and not as the representative of any organized group. This is a new experience for me and your willingness to listen to my personal views concerning the issue that is before you enhances my appreciation of my American citizenship.

Since I am neither a parliamentarian nor a political scientist, my comments will necessarily be brief. I am just an average citizen who reads the newspapers, watches television, and listens to the radio and then tries to think things through.

What I have been reading and hearing recently has given me grave concern about trends in government. Without meaning to be presumptuous, I am inclined to believe that there are thousands, probably millions, of other inarticulate and unorganized Americans who feel as I do. They look to Washington with apprehension as they witness the obliteration of ancient landmarks and threats to the citadels of freedom which our fathers built.

The delicate balance between the legislative, executive, and judicial departments of government is peculiar to the American system. We have been taught to believe, and we do believe, that it comprises some of our greatest safeguards to liberty under law. Now we are witnessing an imbalance between these functions of government which have served us so well, and we worry about it.

These are times when we are hearing discussions about the conflict between liberty and authority, and we wonder what it all means. We are witnessing a centralization of power in our National Government at the expense of States rights and this, to us, means the erosion of our freedom.

The nationwide revolt against the present level of Federal spending is nothing more or less than the voices of taxpayers who are saying to their Government, "We want to be free to spend a larger share of our earnings as we choose." Gentlemen, these things trouble us, and that is why I am here.

In a dynamic society like our own, change is inevitable, but change—the kind of change that endures because all men accept it and live with it—does not come suddenly. It is a maturing and a ripening. It cannot be accelerated by statute, edict, or judicial decision. It cannot be accelerated—with deference to the honorable Members of your body who think otherwise—by the modification of Senate rule XXII.

But some things do not change. The eternal verities are constant. The bedrock principles upon which our system has been built do not lend themselves to change without weakening the entire edifice. We should never confuse the foundation with the superstructure.

The dignity of man cannot be protected by penalizing one minority to befriend another. This only creates a chasm of bitterness that no one can cross. It sets neighbor against neighbor, friend against friend, and brother against brother.

Senator TALMADGE. Mr. Campbell, will you excuse me, please. The nomination of Mr. Erle Cocks, Sr., president of the American Bankers Association, is being considered this morning by the Banking and Currency Committee, and as he is one of my constituents, I want to go up and speak a word in his behalf. I do not know how long before I will be back, but I hope to see you again before you get away. Thank you.

Senator JAVRS. Please proceed.

Mr. CAMPBELL. Thank you, sir.

As best I could, I have informed myself on the history of rule XXII. It appears to reflect a determination on the part of the Senate to increase rather than to diminish the safeguards of the minority. The long history of the rule fails to disclose, in my humble judgment, that a single American citizen has been done a disservice because of unlimited debate by the Members of your honorable body.

Certainly now is no time to be tampering with an institution that has been a safeguard against roughshod majorities. Certainly now is no time to become so concerned with what has been referred to in these hearings as the tyranny of the minority as to disregard the much more dangerous tyranny of the majority.

In the long years in which rule XXII has been in effect, our country has endured its greatest trials, attained its greatest stature, and acquired an unsought and somewhat unwelcome position of world leadership. Surely rule XXII was not a handicap as we made our greatest strides, not only in defending freedom everywhere, but in developing a social accountability for the welfare of all Americans.

To modify rule XXII will weaken the great defenses of the Senate against hysteria and panic and dictatorship. This may seem at the moment far away, but there have been times in our history when all these threatened us, and no man can say when they will reoccur.

The Senate was conceived by Thomas Jefferson as a council, which, with its longer term of 6 years, could see beyond the present and make judgments deliberately.

The institution of unlimited discussion is an instrument of moderation. It gains time to reconsider hasty decisions and to inform the country of the great legislative issues that are before the Congress.

Surely, if and when an issue becomes so preponderant in importance that our national welfare is jeopardized, there will be 64 Members of the Senate whose judgments and opinions will have been solidified to the extent that they can say, "Let us now vote on the question." And vote they will.

To modify the rule as is proposed would be tantamount to admitting that no issue could come before the Senate that would be of sufficient importance for two-thirds of your membership to have a meeting of minds, and thus the stature of the United States Senate would be reduced in the appraisal of Americans everywhere who look upon it with such vast trust and confidence.

I have referred to the unease which I believe is in the minds of most Americans about the Washington scene. In the center of that scene is an institution that is close to the hearts of all of us, because it deserves to be. It is the United States Senate. For as long as I can remember—and that is a long time—it has been referred to as the greatest deliberative body in the world.

Gentlemen, I beg of you not to reduce the stature of the Senate by tampering with the rules which have contributed so vastly and for so long to the strength and the general welfare of our great country.

Senator JAVITS. Mr. Campbell, I appreciate your statement very much. I know my colleague does as well.

May I ask you just one question: Have you ever looked into the rules of debate in the Senate of the State of Mississippi? Do you know what they are?

Mr. CAMPBELL. No, sir. I do not, sir.

Senator JAVITS. Now would you feel just as strongly about unlimited debate there as you do in the United States Senate?

I don't want to ask you any tricky questions. I will tell you as a fact that in the State senate of your State debate may be stopped by the use of what is called the previous question. In other words, a majority of those who are present and voting can cut off further debate.

Mr. CAMPBELL. Yes, sir.

Senator JAVITS. In addition, there is quite a time limitation. Your State happens to have one of the tightest in the United States on the amount of time a member may speak without special leave of his body. But I just wonder if you feel the same way about your State body as you do about the United States?

Mr. CAMPBELL. Well, it would have to be with respect to the history of what has gone on there, Senator, and I do not recall that in Mississippi there has been the reduction of debate or failure to have unlimited discussion on matter that was vital to the importance of the State without respect to what the rules are.

Senator JAVITS. Thank you very much, Mr. Campbell. Certainly glad to see you. We appreciate your statement very much.

Senator, thank you very much.

Senator STENNIS. Thank you very much. Appreciate being down here with you.

Senator JAVITS. Senator Sparkman. The next witness is Senator John Sparkman, of Alabama.

Senator, we are very honored to have you appear before us. I know my colleague will be sorry to have missed you, but he had to go and testify before the Banking and Currency Committee, with which you are quite well acquainted.

STATEMENT OF HON. JOHN SPARKMAN, A UNITED STATES SENATOR FROM THE STATE OF ALABAMA

Senator SPARKMAN. That is the place where I ought to be at this very minute, but I do appreciate the opportunity to talk with you very briefly on this question of proposed amendment of rule XXII.

Personally, I do not believe that rule XXII requires or needs any amendment. I think it has a very definite purpose. After all, we must remember that this Government of ours is built upon the system of checks and balances. I don't have to explain to you or to any other Member of the Senate or any American, so far as that is concerned, the matter of our so carefully balanced system of government as among the several branches of Government and even between different divisions within the respective branches themselves—the veto, the passage over a veto, the many other things wherein one branch of Government or one division within a branch checks or balances against the other. Rule XXII is a part of that.

I would like to discuss this from the standpoint of rule XXII being a protection for the States. I would like to say: Are the individual States to be robbed of their rights as minorities?

And, by the way, Mr. Chairman, I anticipate the question that you may put to me with reference to the right of unlimited debate in Alabama, and I noticed the question that you put to Mr. Campbell, whether or not he would advocate the same.

There is a great freedom of debate in Alabama. I don't know off-hand just what the technicalities of the rule are, but I do know that frequently the senate of the State legislature does prolong debate. Usually it comes out very much the same way as prolonged debates do by both sides finally getting together and agreeing on some practical course for the time being.

However, I don't think it is the same within a State. The State governments were set up originally as sovereign governments and the sovereignty lodges in the State and no part of the sovereignty is within the lower political subdivisions except as they are a part of the State as a whole. But that is not true in the Federal Government.

The United States Government as a whole is a Federal Government in which there are two sovereignties, the sovereignty of the Federal Government which is only that which the States gave it, and the sovereignty of the respective States.

By the way, I remind you that up until 1913, I believe it was, States were represented in the Congress of the United States as such. They still are, but what I mean is that up to that time the two Senators were selected by the State legislatures and were regarded as representing the States and not necessarily the people within the States.

Members of the House of Representatives represent the people of their respective districts. But from the inception of our Government, Senators were here representing the sovereign States, and I think it makes a great difference and is not at all analogous to the situation within an individual State.

I simply anticipate the question that you might put to me regarding Alabama and that would be my answer to it.

Should a group of States from one section of the Nation band together to force a law upon a second section by barring Senators from the second section from having the opportunity to present the debates of that section's convictions upon the floor?

The House of Representatives represents only a geographical subdivision of the State. The executive branch has no direct responsibility to the State. The Supreme Court, because of the very nature of its functions and the conditions under which it was effectively established, was effectively isolated from the individual States. That leaves only two Senators from each State to look after the individual and minority interests of each State.

That is why it is important that the present rule requiring 64 Senators to vote in favor of limiting debate be retained. Free debate is essential to protect minorities from ruthless majorities.

Democracy does not necessarily mean simple majority rule. There are many instances in which a simple majority has no power.

I simply mention, for instance, Senate ratification of treaties requiring two-thirds vote; Senate approval of a constitutional amendment requiring a two-thirds vote; ratification of a constitutional amendment requiring a favorable three-fourths vote of the States; and, of course, the present rule that 64 Senators—that is, two-thirds of those duly chosen and sworn—must vote in favor of cloture in order to shut off debate.

The Constitution contains certain rights guaranteed to each individual person, rights which not even a majority of our 170 million population can take away.

Unlimited debate, or, as most people call it, the filibuster, serves especially as a protection against unwarranted invasion of the Federal Government into the private rights of minority groups. Unlimited debate has been minutely considered in the past and has been approved by the Senate.

The rule is a sound one, passed after long consideration, and is an effective tool against passage of hysterically written and emotionally debated legislation.

By the way, Mr. Chairman, I think it is most interesting to consider the history of this rule.

It is rather strange; a great many people have the idea that rule XXII is something that has been imposed upon the people of this country within recent years. As a matter of fact, rule XXII is a liberalization of what existed prior to that time.

Up until 1917, I think it was, there was no limit on debate whatsoever. In 1917, I believe, it was the question of arming merchant ships that produced the prolonged debate. President Wilson described it as that little group of willful men, I believe, and that is what it was that led up to a modification of the lack of any rule prior to that time.

As a matter of fact, you may be interested to know—you know it already, I presume—that the fight for writing some rule was led by a very eminent statesman from my State, Oscar W. Underwood. That is when they wrote into the rules that, under certain conditions, cloture could be imposed.

But, under the interpretation that was given at that time and under the rulings, numerous rulings of the Presiding Officer of the Senate subsequent to that time, it was held not to apply to motions.

Now, rule XXII, the present version of rule XXII, was adopted only a few years ago. I think it was 1948.

Senator JAVITS. 1949.

Senator SPARKMAN. 1949. I was in the Senate at the time. And it was a further liberalization of the rule that was adopted in 1917 in that it was made to apply to motions as well as to resolutions and bills under consideration.

I think we ought to keep that in mind; that the present rule is an evolution from a time when there was no such thing as cloture at all in the Senate of the United States, and I see no need of going further. I believe in the system of this Government of ours. I believe in this system of checks and balances, and I don't believe it ought to be disturbed.

I believe in the protection that the Constitution of the United States gives, both to individuals and to minorities. It doesn't set up a government necessarily of the majority. It sets up a government in which guaranties are sought to be imposed for all citizens of the United States, whether it is a part of the majority or a part of the minority, and I want to protest against any change in the present rule XXII.

Senator TALMADGE. Any questions?

Senator JAVITS. I just wanted to express my personal pleasure to Senator Sparkman, before whom I have personally appeared many times, both as a Member of the House and a Senator, in having him appear before a subcommittee of which I have the honor to be a member.

Senator, I would just like to share with you one brief observation. I hope you won't consider me presumptuous. I think, if there is anyone who advocates the position of the South who is a reasonable human being and an intelligent human being, it is the Senator from Alabama. I hope very much to earn that same description myself, though I am very much on the other side.

But I would like to say to the Senator that I think the situation today is somewhat analogous to 1917 in that I believe those who oppose the change in rule XXII are facing the test on the Senate floor right now and that, regardless of what any of us may wish, I think the same historic forces which brought on the rule in 1917 are very likely to bring on the change if, as a country, we don't measure up to this challenge which we are all meeting—it goes for me as well as for those on the other side—on the floor now. That is my conviction.

I want to express it to the Senator, for whom I have a very great affection as a friend.

Senator SPARKMAN. Well, as long as there are rules, I believe in abiding by the rules. When 64 Senators vote to shut off debate, we who should be debating will yield to the 64 Senators. That will be the rules of the game. I am not in favor of changing those rules in the middle of the game.

Senator JAVITS. The Senator favors the rule as it stands now?

Senator SPARKMAN. I favor the rule as it stands and, furthermore, I want to say this, in all due deference to you whom I have known and served with in the House and I have known as a very fine and fairminded representative of your people and always very able and frank in the expression of your views: I want to say that I am of the opinion that, if it were not for the existence of the so-called civil-rights issue, there would be no advocacy of the change of this rule, and I think that is most unfortunate.

I don't think I have to state my views. I have stated them many times before. I am sure the Senator from New York is familiar with them. I think that it is most unfortunate that this so-called civil-rights problem has been made a political problem, and it is. There is just no getting around it. It is wrapped up in politics. I think—I have said this oftentimes—that, if a truly earnest effort were made to work it out on the basis that is much more important, that is, an economic basis, the solution would come much more rapidly than it is coming by the semiforce methods.

Anyone familiar with our section of the country is bound to know of the tremendous progress that has been made within recent years, in which the racial tensions have virtually disappeared and the people have learned to live together and to prosper together. It has been an economic problem. As long as there wasn't enough to go around, naturally, somebody was going to be shortchanged. That is a rule of human nature, and that is just what took place. That is the reason that we didn't have the good schools for the Negroes. We didn't have them for the white children.

But you go to the average southern city today and you will find better schools for the Negroes than you will find for the whites. It is catching up. As our economic recovery took place, we had more to spread around, and our people have been catching up and, as a result,

ofttimes—well, I would say in the average southern city, large towns, you will find better schools, buildings, and equipment for the Negro children than you do for the white children, more modern.

Senator TALMADGE knows the situation that prevails in Georgia. I can only speak for Alabama. But for, I guess, 30 years, we have had a law, and it hasn't been merely a law—it has been enforced law—whereby every child in the State of Alabama has the same number of school-days. There is nothing said about color. Every school teacher with the same training and experience gets the same pay, and there is no distinction at all made in it.

The improvement has come about in almost exactly the same manner and to the same degree that economic improvement has come about, and it convinces me, and it strengthens me in the conviction that I have long had that, basically, the problem is economic, and I think it is terribly bad and near tragic that it has become so deeply involved in politics.

Senator JAVITS. Well, Senator Sparkman, I guess we will have plenty of opportunity to debate this. I don't want to detain you any longer this morning.

Senator TALMADGE. Senator Sparkman, I want to thank you for your very fine statement, and express my apologies for not being here at the outset of your remarks. However, I was before your own committee at that time endorsing the nomination of Hon. Erle Cocke, Sr., to the Board of Directors of the Federal Deposit Insurance Corp. Thank you, sir.

Senator SPARKMAN. He is a very fine man, and I shall go up there and, if they haven't voted yet, I will vote for him.

Senator TALMADGE. Thank you.

Senator SPARKMAN. Thank you both.

Senator TALMADGE. I believe Senator Saltonstall is due in about 20 minutes, so we will proceed with the next witness, Mr. Merwin K. Hart, of New York City, president of the National Economic Council.

Mr. Hart, we are very happy to have you with us, and you may proceed at will, sir.

STATEMENT OF MERWIN K. HART, PRESIDENT, NATIONAL ECONOMIC COUNCIL, NEW YORK, N. Y.

Mr. HART. Mr. Chairman, Senator Javits, on behalf of the National Economic Council, I thank this committee for the opportunity to appear and speak on the proposed changes in rule XXII.

While the Senate rules are primarily the concern of the members of the Senate, yet in a larger sense this rule XXII is of vital importance to the whole people, since it insures unlimited debate. And unlimited debate always has been a guaranty against over-hasty legislation.

Since the freedom the American people enjoy includes freedom of speech, with the accompanying freedom to petition the Government against grievances, real or alleged, this freedom of necessity permits activities not only by those who wish to preserve, but by those who are willing, for whatever reason, to destroy, any of the freedoms we enjoy.

The movement to change rule XXII is, of course, championed by Communists. I say "of course" because, whatever its sponsorship

in the past, it is presently one of the many measures that pattern the effort to bring all power into Federal hands, from which a Communist take-over could be most easily accomplished.

We hear incessant talk these days about the virtues of democracy. But the constitutional convention discarded democracy, just as it discarded monarchy, when it was considering the form of government to set up in the United States. It discarded democracy on the ground that throughout history democracy had always failed.

What they set up was a republic—a government with a separation of powers into legislative, executive, and judicial, with its accompanying checks and balances. Through its Bill of Rights it guaranteed the individual citizen against encroachment by either Federal or State governments—even encroachment by a majority—with respect to the citizen's fundamental rights.

The lower House of Congress, with its 435 members, is perhaps compelled to fix a limit on debate. Hence, as a rule it has been possible for certain measures that many think unwise to slip through the House because of insufficient consideration and debate.

But the Senate, with only 96 members, is different. By rule XXII the Senate has reserved to itself the right and duty of examining, at length and without reference to the time spent in debate, measures, unwise or inadequate, some of which may have come from the House.

This, we take it as private citizens, is the reason for the existence of rule XXII. We agree thoroughly with Senator Russell of Georgia, who said in 1951 that,

Grave evils often result from hasty legislation, rarely from the delay which follows discussion and deliberation.

During the past 20 years, many important measures have been passed by Congress under the pressure of war or depression or some other crisis, real or alleged. We can see now that it would have been far better for this country if some of these measures had not been passed.

As things are today, the existence of rule XXII is about the only remaining bulwark the people have against unwise legislation by the Congress.

I spoke a few moments ago of the right that any group, of whatever turn of thought, has to organize and petition the Congress, that is, to engage in lobbying. For the past 30 or 40 years this country has been under constant pressure from collectivist influences, Socialist and Communist. And it has been shown that these influences have no lack of financial support. Some of this support may come from outside the United States. Americans who give money to strengthen these influences certainly receive their initial inspiration, whether they realize it or not, from outside the United States. Thus the Communist Internationale in 1922 established the International Red Aid—the IRA—in order to promote the weakening of the immigration laws of various countries, particularly the United States. The American section of IRA, organized in 1925 as the National Labor Defense, within 10 years has developed 800 subsidiary organizations. These, as we well know, include in their membership a tremendous number of well-meaning and often well-heeled Americans who have worked aggressively at times to persuade the Congress to weaken its immigration laws.

And while the highly organized left-wing groups are working on Congress, directly or indirectly, those conservative groups that wish to retain the more stable factors in our form of government are inadequately organized and financed. Many indeed of the left-wing internationalist-socialist groups have secured deductibility before taxes for their individual contributors, while hardly a single conservative group has secured such deductibility. In fact, such deductibility has been specifically denied many of them.

So rule XXII, which permits continued and unlimited debate, is an absolute necessity if we are to prevent a bare majority from wiping out all those minority rights guaranteed by the Bill of Rights.

Many efforts have, of course, been made in the past to change rule XXII. Presumably in each of these cases the reason for the effort to change it has been some pending legislation of very great importance on which feeling on both sides has run high.

The legislation which has apparently stimulated the present drastic effort to amend rule XXII is, of course, the demand for so-called civil rights. The present civil-rights bills would bring about:

1. A grant of power to the Department of Justice to intervene directly by employing Federal injunctions and contempt proceedings in cases of alleged violation of civil rights.

2. The establishment of a Federal Civil Rights Commission with subpoena powers.

3. Creation within the Justice Department of a special Civil Rights Division.

All of these provisions are an invasion and preemption of States rights.

Federal intervention in these State and local rights would deprive the citizens of the right of trial by jury, one of the most important rights guaranteed by the Bill of Rights.

Now what is back of all this is, of course, the National Association for the Advancement of Colored People, an organization formed at the instance of the Communist Party for the very purpose of stirring up friction and discord. I am advised that there was only one Negro member of the original committee, and throughout its history its main motivation has come from white members.

The Supreme Court of the United States in the school segregation case turned its back completely upon long-accepted principles of American constitutional law and of American custom, and instead adopted the views of sociologists as experts. One, at least, of these, who was of foreign birth, had expressed contempt for the Constitution of the United States. The Court has likewise turned its back on established law and custom in such cases as the Steve Nelson case, the New York Slochower case, the Michigan so-called "dirty book" case, the bus segregation case, the Girard College case, and many others could be mentioned.

Hence, there is reason to believe that any of these civil rights bills that are pending would, if passed, be sustained by the present Supreme Court, even though it meant the attempted repeal by the Supreme Court of vital provisions of the Bill of Rights.

For the Senate to modify rule XXII, thus rejecting unlimited debate, would assuredly lead sooner or later to the passage of some one or other of these objectionable civil rights bills. Then the Supreme Court, having usurped, as would be likely, the role of the Congress and

the legislatures of the 48 States, would arrogate to itself the power to amend the Constitution and would remove the last bar to the destruction of the American Republic. And the Senate, if it weakened rule XXII, by such action would literally abdicate in favor of the Communist-Socialist influences that are abroad in the land.

It will be asked by some, Do we not all believe in rule by the majority?

The answer is, on all ordinary day-to-day matters, "yes." But under the great underlying principles of the Constitution there are some questions so grave and involving rights so vital to the people as a whole that experience shows it is not safe for all the people to leave these to the decision by majority vote. In the past we have prospered as a Nation because we have held these rights sacred and above and beyond all other rights.

The idea underlying this thought is one of the fundamental ideas in the Constitution—in fact, in the idea of even having a written Constitution. The Constitution gives vast powers to both the legislative and executive branches, and implied powers, at least, to the Supreme Court, which powers incidentally the Supreme Court is now trying to expand and augment.

But in certain provisions of the Bill of Rights, notably amendments IX and X, and in the terms of article V of the Constitution providing ways in which the Constitution can be amended, it is perfectly clear that the framers of the Constitution intended to make it difficult for the Constitution to be amended. These safeguards have been observed practically throughout our history, until very lately.

Now, since the obvious purpose of the efforts to amend rule XXII is to clear the way for the passage of pending civil rights legislation, and since the civil rights legislation would to a large extent throw amendments IX and X down the drain, there is all the greater reason why rule XXII should not be tampered with.

Human experience has taught that speedy action on ordinary matters is often required and is reasonably safe. But there are certain fundamental matters of the kind dealt with in the Constitution itself and in the bill of rights, which according to the theory on which we have always gone should not be changed except after a long lapse of time in order to give plenty of time to the people and to the people's representatives in Congress and in the States to weigh them carefully.

This is why we have had only 22 amendments to the Constitution in 168 years.

If this rule XII should be amended and if the present objective of those who wish to amend it were obtained—namely, the passage of the proposed civil rights legislation—then some of the most vital rights of the American people as a whole would be destroyed.

Therefore, we of the National Economic Council respectfully ask the Senate, but with all possible emphasis, not to amend rule XXII but to leave its present wording intact.

Senator TALMADGE. Any questions?

Senator JAVITS. No.

Senator TALMADGE. Mr. Hart, thank you very much. We appreciate your appearing before us and giving us your views.

The next witness is Mr. J. D. Henderson, national managing director, American Association of Small Business, New Orleans, La.

You may proceed at will, Mr. Henderson.

**STATEMENT OF J. D. HENDERSON, NATIONAL MANAGING DIRECTOR,
AMERICAN ASSOCIATION OF SMALL BUSINESS, NEW ORLEANS,
LA.**

Mr. HENDERSON. My name is Joseph D. Henderson. I am the national managing director of the American Association of Small Business, Inc., a national organization which had its inception during 1941 and received its charter February 20, 1942. We were organized in New Orleans, La., and our membership has spread throughout the country. At this time, we are working in all 48 States of the Union, including the District of Columbia, in opposition to any legislation which would withdraw the constitutional rights of freedom of speech from any individual Member of the Senate and the right to unlimited debate in the Senate of the United States of America.

We send our material to newspapers throughout the country, each United States Senator and Members of the House of Representatives in Washington. We also contact State legislatures, municipal councils, and other public bodies. We have made statements in testifying before committees of the Congress, State legislatures, city councils, and boards.

We support legislation beneficial to all small businesses and our members in particular, and we oppose legislation which is detrimental. We render services to small businesses and individuals, helping them to go into business, stay in business, secure sources of supplies and material, funds to operate the business and for expansion purposes. There is no service too large or small for the American Association of Small Business, Inc., to undertake for one of its members. All a member has to do is tell us about his problem and we do our utmost to help solve it.

We are a service organization and we endeavor to encourage small businesses to patronize each other, work together so that they may expand and become as big as their initiative, ability, and energy will permit.

Various organizations are working in a rather limited field, but the American Association of Small Business, Inc., in the conduct of our public relations program dedicated to keeping small business in business, is working in a field of over 125 different business and professional categories, because small business is the grassroots and backbone of the American way of life.

This information has been presented to you so that the members of your committee may have a better understanding of the scope and sincerity of the services performed by the American Association of Small Business, Inc.

At least seven bills have been introduced in the Senate during the 1st session of the 85th Congress affecting freedom of speech and Senate rule No. XXII.

The members of the American Association of Small Business, Inc., are in favor of the great freedom of the individual Senators to participate in the discussion on the floor of the Chamber, because it has provided minorities with one of their most potent weapons, the filibuster.

Small business is a minority which is having great difficulty in staying in business in many instances because of excessive taxation, extravagance in Government spending, regulations, regimentation, and the unrewarding responsibility of being forced to serve as a tax col-

lector. In addition, the small-business man runs the risk of violating some law or bureaucratic regulation and becomes subject to fine and imprisonment because he had unintentionally failed to properly serve as a forced tax collector.

Over the years, small-business men have watched with much interest the so-called filibustering on the floor of the Senate because in most instances the individual Senator doing the talking is either for or against legislation which will either be detrimental or favorable to small businesses.

Judging from the language used in the various bills introduced for the purpose of regulating freedom of speech on the floor of the Senate, the objective of those sponsoring these bills is to do away with the time-honored practice of filibustering.

The Senate of the United States of America is the greatest legislative body in the world, and in all probability in the entire history of mankind. While legislatures are of modern origin, the Greeks and Romans enacted legislation by the popular assembly. Representative lawmaking bodies in the modern sense never existed among the Romans. The ancient world trampled on the very verge of representative government without actually crossing the boundary.

The beginnings of the modern representative systems of government are found in the early English history, out of which the English Parliament, the first representative legislature known to history, was destined ultimately to evolve. And so we in this great Nation today owe much to the ancestor of the Anglo-Saxon people who came to this land and established a republican form of government which has stood without interruption since July 4, 1776.

The Founders of our Nation did not provide for limiting the debates on any subject by an individual Senator in the United States Senate chambers. They evidently realized that the time might come in the history of our Nation when it would be necessary for a number of our Senators to stand up and debate for or against national legislation for many long hours. The privilege of filibustering has been exercised by many Members of the Senate and a long list of filibusters from 1841 to 1951 may be found in the Congressional Record, 83d Congress, 1st session, January 7, 1953, pages 216-217.

Many statesmen in the United States Senate have successfully filibustered over the years, and it is interesting to note that a number of advocates of changing the rule to limit debates have taken advantage of their senatorial rights of freedom of speech and set new records. So, it would seem that it depends upon whose ox is being gored as to whether the ox should be dehorned.

For instance, Senator Morse, of Oregon, was formerly a Republican and a staunch opponent of freedom of speech on the floor of the Senate, also changing his attitude about the right to filibuster, when in 1953 he talked for 22 hours on legislation being considered by the Senate covering the confiscation by the Federal Government of tidelands belonging to the various States of the Union.

Our Founding Fathers realized the wisdom of permitting the honorable gentlemen of the Senate the right to talk as long as they wanted on any matter they have a mind to discuss. Realizing the Members of the Senate might talk a long time about important legislation and, possibly in the heat of debate, say something which might be disturb-

ing, the founders of our Republic granted immunity to them for anything they may say on the floor of the Senate.

Freedom of speech is one of the most cherished rights granted to the citizens of the Nation by our Constitution and Bill of Rights. Certain elements in the country would like to see our constitutional guaranties taken away from us. In fact, the forces of infiltration of communistic thinking is becoming more evident as time goes on. Now, it just might be that the proposals to limit the debate on the floor of the Senate could be the beginning of the end of freedom of speech in the Nation.

The judicial legislation now being enacted by the Supreme Court of the United States of America is far reaching and without control by Congress. It seems to me a great error could be committed by the Senate in changing rule XXII to limit freedom of speech in debate on the floor of the Senate, because the Supreme Court could interpret such legislation as being authority to reverse one of its decisions and rule against freedom to debate in the churches, lodge halls, union halls, and all public places where three or more are gathered.

In closing, I wish to thank the members of this committee for inviting me to present a statement here today. You are earnestly implored not to enact any legislation which would bring about a limit of debate on the floor of the Senate. During these uncertain days, when judicial legislation is being forced upon the people and the Congress is being bypassed, the last hope of a great, free people rests on the integrity of the Members of the Senate of the United States of America.

Senator TALMADGE. Any questions?

Senator JAVITS. Mr. Henderson, I gather that the persons whose names are printed on your letterhead are all the officers of your organization?

Mr. HENDERSON. No. They are the regional vice presidents. We have directors in various areas of the country.

Senator JAVITS. These regional vice presidents cover the areas in which the organization operates?

Mr. HENDERSON. That is right. We have members from Maine to California. Where we have a larger number of members, then there is a regional vice president.

Senator JAVITS. Well, Mr. Chairman, I ask that the list of officers of this organization be made part of the record of Mr. Henderson's testimony.

Senator TALMADGE. Without objection, it is so ordered.

Mr. HENDERSON. Thank you.

Senator TALMADGE. Mr. Henderson, we appreciate very much your appearing before us and giving your views and your statement.

(The list of officers referred to is as follows:)

AMERICAN ASSOCIATION OF SMALL BUSINESS

Incorporated in 1942

National headquarters, 431 Balter Building, 404 St. Charles Avenue,
New Orleans, La.

Allen H. Johness, Sr., president, realtor, 1102-4 Whitney Building, New Orleans, La.

Joseph M. Miller, vice president, Miller Mortgage Co., 912 Maritime Building, New Orleans, La.

Alice M. Kelleher, secretary-treasurer, Louisiana Press Clipping Service, 1702 Valence Street, New Orleans, La.

Joseph D. Henderson, national managing director.

Regional vice presidents:

Munger T. Ball, Sabine Towing Co., Inc., Post Office Drawer 1500, Port Arthur, Tex.

A. T. Beardslee, Beardslee Launch & Barge Service, Inc., Foot of St. Francis Street, Mobile, Ala.

Henry Bledenharn, Jr., Onachita Coca-Cola Bottling Co., Monroe, La.

J. C. Bolton, Rapides Bank & Trust Co., Post Office Box 31, Alexandria, La.

C. E. Broussard, Beaumont Rice Mills, Post Office Box 3111, Beaumont, Tex.

R. J. Castille, Guaranty Bank & Trust Co., Lafayette, La.

W. J. Gex, Jr., Gex & Gex, Attorneys at Law, Bay St. Louis, Miss.

T. E. Henry, Delta Distributing Co., Greenwood, Miss.

Walter G. Houghland, Jr., Walter G. Houghland Sons, Post Office Box 1040, Paducah, Ky.

R. Lee Kempner, United States National Bank, Post Office Box 170, Galveston, Tex.

A. L. Mechling, A. L. Mechling Barge Lines, 51 North Desplaines Street, Joliet, Ill.

Paul O. Peters, research consultant, 930 D Street NW., Washington, D. C.

Leo W. Seal, Hancock Bank, Gulfport, Miss.

H. H. Shelor, Furniture Industries, Post Office Box 647, Florence, S. C.

M. B. Speir, Jr., Speir & Co., Inc., 130 East Fourth Street, Charlotte, N. C.

S. G. Thigpen, Thigpen Hardware Co., Piquette, Miss.

F. Wirt Waller, the Henry Walke Co., Post Office Box 1041, Norfolk, Va.

W. G. Winters, Sr., Hull Telephone Co., Inc., 2518 Drexel Drive, Houston, Tex.

Senator TALMADGE. The next witness is Mr. Ernest W. Goodrich, attorney from Surry, Va.

Pardon me, Mr. Goodrich. I am sorry, but Senator Saltonstall has been waiting very patiently, and we would like to take him next, because he is very, very busy.

Excuse me, Senator. I am sorry. I forgot you were waiting.

STATEMENT OF HON. LEVERETT SALTONSTALL, A UNITED STATES SENATOR FROM THE STATE OF MASSACHUSETTS

Senator SALTONSTALL. That is all right.

Mr. Chairman and Senator Javits, I shall be very brief, but I do want to speak on Senate Resolution 30 very briefly because I originally had intended to file such a resolution myself. When Senator Knowland and Senator Johnson determined to do it, I joined with their effort.

I have no prepared statement, but I would like to go into history for a minute or two.

Back about 1946, we had a long debate which concerned an amendment to the Chaplain's prayer, and we debated that amendment for 2 or 3 weeks, and then by agreement it was withdrawn. That was an amendment offered by the late Senator Hoey who was a very distinguished Senator and a great friend of mine.

As a result of that and discussion at that time, I determined that if we were going to have a cloture rule, it ought to be an effective rule.

So, on May 7, 1946, I filed a resolution, after consulting with Mr. Charles Watkins, the Senate Parliamentarian, to insert the words "major motion or other matter pending before the Senate or unfinished business."

The phrase "or unfinished business" was the suggestion of the late Senator Taft.

That resolution, filed in 1946, was heard by the Rules Committee. At that time, I did not make any suggestion on changing the number of Senators voting required for closure of debate. I simply wanted to include a "motion to take up" as a proper subject of a cloture.

Since there was no action on that resolution, I filed another resolution on January 6, 1947, which added that cloture could be invoked by a majority of the Senators present and voting.

I want to say now that I do not approve of that provision at the present time. I certainly have changed my mind on that subject. I believe it should be two-thirds of those present and voting but not a majority or a constitutional majority.

Again on January 5, 1949, with Senators Knowland, Ferguson and Ives, I submitted a resolution.

Now that resolution was made over into a clean copy—the same words that we filed on January 5, 1949—was made over into a clean copy on February 17, 1949, which became Senate Resolution No. 15 and was filed by Senator Hayden, who was then the chairman of the Rules Committee, and Senator Wherry, who was the ranking minority member of the Rules Committee, and it was put on the calendar. It was debated on several occasions, and an amended version was adopted on March 17, 1949, as the rule of the Senate.

It is the present cloture rule of the Senate. Under this rule the Senate may invoke cloture on any—

measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, * * *

It also requires a constitutional two-thirds of the Senate to invoke cloture and eliminates the possibility of cloture if there is a motion to change the rules.

The final form of the present rule was worked out on a Sunday morning with Senators Russell, Byrd and one other Senator on the Democratic side, and Senator Wherry, myself and one other Republican whom I do not now remember and was adopted by the Senate by a substantial vote shortly after that Sunday morning conference.

Again on May 22, 1950, I filed a resolve for myself, Senators Ferguson, Smith of New Jersey, Senator Knowland of California, Thye of Minnesota, Ives of New York, and Hendrickson of New Jersey.

That resolve would have restored the vote of two-thirds of those present and voting to invoke cloture. I think it would have made no other change.

I testified before this committee on that proposal, according to my records, I think, in October 1951. No action was taken on it.

You now have before you Senate Resolution 30 which proposes in substance three modifications: It would change the requirement of a constitutional two-thirds to two-third of the Senators present and voting. It would change the rules so that cloture could be invoked on a motion to take up a resolution to change the rules. The existing exception of the application of rule VIII prohibiting debate on motions made before 2 o'clock to motions to proceed to consideration of proposals to change the rules is not affected.

Personally I think that that is fair. It resulted from a suggestion that I made, if I may respectfully say so, to the majority and the minor-

ity leaders, after consultation with Mr. Watkins, the parliamentary clerk.

Now the third point simply puts into writing what the majority of the Senate felt this year: that the rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

Personally I feel that this is appropriate. It merely puts into writing what has been the understanding since 1789, and I am in favor of putting it in simply to obviate future arguments such as we had at the opening of this session; also because I think it supports what is certainly my interpretation and what I believe I think to have been the general intention of the Constitution when it was drawn up in Philadelphia.

I think, Mr. Chairman, that that is all I have to say. I believe thoroughly in the principles of cloture after a full and free discussion. I say that because I believe that the Senate should be given an opportunity to vote. I am not in favor of a majority or a constitutional majority being permitted to invoke the cloture rule. I believe that minority rights should be protected. I believe that they are amply protected by the requirement of a vote of two-thirds of those present and voting to invoke cloture.

I think a constitutional two-thirds is too difficult and too extreme.

I believe that the rules of the Senate should be continuing rules. I also believe that a resolution to change the rules should not be permitted to be made pending business of the Senate without an opportunity to discuss whether it should be brought up.

That is the substance of my thinking on this situation. I have been testifying on it now for 11 years before distinguished Members of the Senate, and I am glad to appear before two such thoughtful, able Members of the Senate who may have slightly divergent views on this subject.

Senator TALMADGE. Any questions?

Senator JAVITS. Senator Saltonstall, it is a great honor to have you before us. You are properly considered not only dean of the Senate but an intellectual leader of the Senate. I don't have to agree with every one of your findings to evidence my deep respect and regard for you.

I have only one question. I think you are a man of very great conscience, and this question is most serious to me and many others:

Do you feel that if your suggestions were adopted in substance this would represent a denial of the right to express the point of view of a Senator or of his State in the Senate of the United States?

Senator SALTONSTALL. No, sir, I do not. I would not be here arguing for it and I would not have been arguing for it for the last 11 years if I believed that that were true.

Senator JAVITS. You believe their rights will be fully safeguarded and protected within the purpose and spirit of the Constitution if your recommendations are in substance adopted?

Senator SALTONSTALL. Yes, sir, I do; and as I have stated, I repeat I do not believe in cloture by majority vote as I proposed 10 or 11 years ago. My experience in the Senate since then has convinced me that two-thirds of those present and voting is more fair than a majority or, on the other side, of a constitutional two-thirds.

Senator JAVITS. Thank you very much, Senator.

Senator TALMADGE. Senator, we appreciate very much your very fine statement and it certainly was enlightening to me on some of the background of the Senate rules. I appreciate it very much.

Senator SALTONSTALL. Thank you very much.

Senator TALMADGE. Mr. Goodrich, you may proceed now, sir.

STATEMENT OF ERNEST W. GOODRICH, DEFENDERS OF STATE SOVEREIGNTY AND INDIVIDUAL LIBERTIES, SURRY, VA.

Mr. GOODRICH. Mr. Chairman, Senator Javits, without being presumptuous might I make one observation before I begin. The Senator from Massachusetts said he has changed his thinking some in 10 years from the majority to two-thirds.

I have read just a little bit of the hearings back in 1949. There were a number of Senators who were originally for cloture and as time went on they changed their views. I think perhaps the Senator's expression here bears that out.

My name is Ernest W. Goodrich, of Surry, Va. I am appearing for the Defenders of State Sovereignty and Individual Liberties upon an invitation from the Honorable Herman E. Talmadge.

I have been a member of the bar in Virginia since 1935 and am admitted to practice before the Supreme Court of Appeals of Virginia and the Supreme Court of the United States. From 1935 through 1939 I was associated with the United States Department of Labor here in Washington. Since 1940, I have been attorney for the Commonwealth for the county of Surry in Virginia, except for 4 years spent in the United States Navy during World War II doing labor relations work for the Bureau of Yards and Docks here in Washington.

At the outset, I should like to make crystal clear, gentlemen, the fact that the Defenders of State Sovereignty and Individual Liberties is not a rabble-rousing, hate-engendering organization, as some segments of the press have inferred. Over a large area of Virginia the finest people are members and active workers in this organization.

While the organization came into being following the Supreme Court's decisions in the segregation cases, it has from its inception concerned itself, as its name implies, with matters other than segregation and integration. We are dedicated to the preservation of our republican form of government, wherein the several sovereign States retain all functions of government not specifically delegated to the Federal Government.

It is because of this dedication that we oppose the present resolutions pending before your committee which are the subject of these hearings. From our view, the present attempt to change the rules of the Senate to make it possible for less than two-thirds of the Senators to cut off debate is but another manifestation of the determination of certain elements in our society further to throttle and ultimately destroy our State governments.

While I am not familiar in detail with the resolutions which are the subject matter of this hearing, it is my understanding that the purpose of the resolutions is to change the cloture rule, making it possible to cut off debate in the Senate with less than a vote of two-thirds of the Sena-

tors, and it is to this general idea of making it easier to apply cloture that I shall address my remarks.

While it is considered old-fashioned and out of keeping with the modern philosophy of government to refer back to our Founding Fathers, it seems to me that a great many people in Washington need to review the genesis of our Government. I think that we need to study again the formation of these United States of America.

Subsequent to the Declaration of Independence and prior to the adoption of the Federal Constitution, I do not believe that anyone would argue that the State governments were not completely sovereign in every sense of the word, answerable only to the people of the States in which always reposes final sovereignty.

The architects of the Constitution—and I might say with pardonable pride that my State contributed its full share—were zealous to retain within the several States every element of sovereignty consistent with a workable Federal system.

As you gentlemen well know, the great issue before the Framers of the Constitution was how to preserve this balance of power. Had Alexander Hamilton had his way, the States would have been destroyed, and I believe firmly that we would not have survived as a Nation.

The great strength of our Government is the division of power between the Federal and State governments and, within the Federal Government, between the executive, legislative, and judicial branches. The present philosophy which permeates the Supreme Court, the executive department, as well as the legislative branches, harkens back to the philosophy of Alexander Hamilton.

Realizing the necessity of safeguarding the powers of the individual States, our Founding Fathers very wisely provided that in this august body, the United States Senate, each State, regardless of its size, territorially or populationwise, should have equal representation. Thus, the Senator from Delaware has as much voice in the deliberations of this body as does the Senator from New York.

I have not studied the history of the cloture rule, but certain it is that no rule of the Senate affords greater protection to the several States of this Nation than does this rule.

While much of the encroachment on the sovereignty of the several States has come about as a result of the grasping for power by the executive departments of the Federal Government and by judicial legislation by the Supreme Court, it is sad but true that the elected representatives of the people in the Congress of the United States have also constantly, through legislation, extended the powers of the Federal Government. While the United States Senate has played its part in this unfortunate movement, it has, at the same time, served as a bulwark against wholesale extension of Federal control.

Except in isolated cases of filibusters against legislation of minor significance, I believe that the record will show that the recurrent attempts to apply cloture have come when there was before the Senate legislation affecting the basic fabric of our Government. Certain it is, the current interest in changing the rule is because of the insistent demand of minority groups that the so-called civil rights legislation be enacted. It is somewhat ironical that the minority groups interested in the civil-rights legislation are willing to sacrifice one of their greatest protections, that of unlimited debate in the Senate, in order to insure

passage of legislation that, when the final history is written, will be termed the most destructive of civil rights ever enacted by the Congress.

I would like to say here, gentlemen, the 1949 hearings reveal that during the twenties when the Senate of the United States was composed, it was thought, primarily of representatives of big business, the greatest arguments made against change in the cloture rule came from the American Federation of Labor. Yet, now, labor is taking the other side.

There is perhaps no one who has followed to any extent the proceedings of the United States Senate who has not had at one time or another a feeling of disgust at the waste of time as a result of filibustering. The difficulty, however, is in deciding which filibuster is a waste of time and which serves a useful purpose. It is my firm conviction that in those cases where a filibuster has no merit, 64 United States Senators will be man enough to stand up and be counted for cloture.

In order to legally change the Federal-State relationship, two-thirds of both Houses of the Congress and three-fourths of the State legislatures must approve such change by amendment. Opposition to legislative attempts to change the Federal-State relationship should not be silenced by less than two-thirds of the Senate.

During the past 25 years repeated efforts have been made in the Congress of the United States in effect to amend the Constitution through the passage of legislation aimed at the further weakening of the sovereignty of the individual States. It is essential, it seems to me, that we preserve the right of unlimited debate in this body to help, in some degree, stem this tide.

One of the great dangers in the country today is that militant vocal minority groups are able to exert great pressure on the Congress and secure the enactment of legislation not favored by the great majority of the people in the country and so often inimical to the best interest of the country as a whole.

I would like to say on that point something I don't have in my prepared statement. That is this:

There has been some talk here this morning about whether we believe in majority rule. I think it would serve a useful purpose if an analysis could be made of the support for the social legislation that has been passed in the last 20 years to see whether or not more than 15 or 20 percent of the people of this country were really behind it.

As you gentlemen well know, in the hearings before this group and hearings of this type in the past on civil rights, and things of that nature—most of the testimony at hearings before legislative committees have been from people that represent militant minority groups. They have paid representatives here in Washington that come to these hearings and testify in favor of legislation that changes the concept of government that our Founding Fathers had. I would like to say that I do not feel and the people of my State do not feel—and I believe that the great majority of the people in this country do not feel—that the Federal Government owes the duty to the people to provide security from the cradle to the grave.

I think it was a disgusting spectacle at both of the national parties' conventions that so many of the speakers said there are still 20 per-

cent of the people that are ill-housed and ill-fed and ill-clothed and the Federal Government—not the State government but the Federal Government—has got to correct that.

Our country was not founded on the theory that it was the Federal Government, a central government, that should provide every man unlimited security. It is up to the individual; and that is what we believe in my State, that the individual has certain obligations himself and should not look to the Federal Government.

No one today is so naive as to believe that minority groups do not exert an influence far beyond their numerical strength.

Were it not for the right of unlimited debate, the dangers inherent in legislation so often sought by minority groups would never be brought home to the great bulk of the American people.

During the hearings before the House committee on the civil rights legislation the chairman indicated very early that further hearings were not necessary because everything had been said on the subject that could be said. In the course of my testimony before that committee I tried to point out that the hearings should be continued until the American people were awakened to the dangers in such legislation. Even though the same arguments may be used over and over—and I know you gentlemen get tired of listening to the same arguments; you are hearing the same argument over and over here this morning, but unlimited debate serves a useful purpose in bringing to the attention of the American people the evils inherent in legislation which seeks to destroy the sovereignty of the several States.

If the civil-rights legislation is debated enough in this Senate—they have already started—if it is debated long enough, gentlemen, until the people of this country understand what is involved in it, there will be a resurgent demand from the people that the legislation be thrown out.

If the legislation is right, then there should certainly be 64 United States Senators who are willing to stand up and be counted for cloture. However, to permit a bare majority of the Senators to shut off the debate will prevent, in this case and perhaps many cases in the future, the American people from ever understanding the full impact of the proposed legislation, now and in the future, on their freedom and liberty.

While at the present time the great reformers are bent upon bringing about the millennium, they will, surely as the sun shines again, be faced another day with a majority bent upon destroying their freedom and liberty.

Failure of the Congress to enact legislation—I think this is important, gentlemen, that failure to enact legislation, however noble its purpose might be, can never be as bad as the enactment of oppressive legislation.

And we have heard a lot of argument that it will kill so much good legislation. I would like to know—and I do not know this, but I would like to know how much good legislation that has proven as time has gone on to be good has been prevented from being passed.

It may prevent the enactment of some good legislation, but if it serves to prevent the enactment of any bad legislation, then the right of unlimited debate will have served a useful purpose.

Twenty-three years ago when I was a student at William and Mary College in Virginia, the Honorable Josiah Bailey visited our campus

and spoke at a convocation. Conversing with him at a luncheon on that occasion, I asked him if the filibuster should not be completely eliminated. I shall never forget his reply to that question. He said that the United States Senate is the only place where a man may talk as long as he wants about anything that he wants and that this right should be preserved as a citadel against oppression.

I say to you gentlemen that when the Senators from 17 States believe that legislation before this body is inimical to the best interests of this country, strongly enough to conduct a filibuster against such legislation—and no one likes to do that; that is a tax on the strength of dedicated men—then the legislation should not be enacted into law. If less than the Senators from 32 States are convinced that the legislation deserves to pass, it should fail. The failure of many pieces of good legislation to pass at a given time will not result in as much evil as the passage of one piece of bad legislation.

We hope, gentlemen, that this committee will recommend that no change be made in the present Senate rule XXII and that in this body, at least, men who are convinced of the soundness of their position may speak unshackled as to time.

Senator TALMADGE. Have you any questions, Senator?

Senator JAVITS. I just wondered, sir, whether you thought you were speaking for a militant minority of people.

Mr. GOODRICH. Sir, we are trying to organize a militant minority group. That is all I can say, because we are unrepresented as I see it now.

Senator TALMADGE. Mr. Goodrich, we appreciate very much your very fine statement. Thank you for coming.

The next witness is Mr. Frederick G. Cartwright, Englewood, N. J., representing the Englewood Anti-Communist League.

Proceed, Mr. Cartwright.

STATEMENT OF FREDERICK G. CARTWRIGHT, PRESIDENT, ENGLEWOOD, N. J., ANTI-COMMUNIST LEAGUE

Mr. CARTWRIGHT. Gentlemen, I am gratified to be given the opportunity to appear before a United States Senate committee as a defender of the rights of dissent and free speech. I regret to say, however, that this legislative Chamber is fast becoming one of the few remaining bastions of freedom in this country where these freedoms still exist. And even this fortress is now under attack.

Yes, gentlemen, the avenues open to lovers of liberty are becoming more and more constricted.

You normally would look to the newspapers for enlightenment and freedom of expression. A sizable segment of the press, however, has closed its columns to anti-Communists. Furthermore, the publishers have used their publications to vilify patriots, hoping to discredit them so that they will be ignored. Whenever opposition to their un-American practices develops, the publishers piously spout about what they call freedom of the press.

The present attempt to change the cloture rule and thus strangle free debate in the Senate either has been ignored by this section of the press, or distorted versions have been given to their readers. Many of the radio and TV networks also have participated in the blackout of news favorable to the defenders of unlimited debate. Small won-

der then that many people are convinced that these so-called news mediums are nothing more than glorified transmission belts for Communist propaganda.

I bring this point up about the press because I believe that the small number of people in attendance at this hearing is a direct result of public ignorance of the dangers inherent in proposed legislation to amend rule No. XXII, and thus, shut off unlimited debate.

To continue, it has been suggested that proposals to muzzle free speech by limiting debate on the Senate floor are Communist inspired. That this is not an unwarranted conclusion is shown in the fact that many of the backers of the amendments to throttle free debate are organizations and individuals who have been closely identified with the Communist movement. Free speech does not exist in Russia, and certainly it will not exist in this Chamber if the Red-Fascist-supported bill is passed.

I might add it was with surprise that I noticed that Senator Wayne Morse, renowned for his use of the constitutional right of filibuster, is now alined with Communists, their fellow travelers, and other opponents of free speech in the attack on unlimited debate. The Senator sponsors Senate Resolution 21, a bill designed to permit a tiny minority of the Senate to suppress this freedom.

Proponents of the new amendments argue that under the present rule a minority can thwart the wishes of the majority and thus tie up important legislation. This argument is untrue. As it now stands, debate can be shut off by a vote of two-thirds of the Senate. What is wrong with that? It is an equitable solution; however, it does not satisfy the antifree debaters. They demand the rules be changes so unlimited debate can be stifled not by a majority of the Senate, but a minority.

If that isn't hypocrisy, I don't know what is.

Anyway, I am nonplussed by the sudden concern for majority rights now being displayed by the professional peddlers of democracy. I cannot recall any other instance where they have expressed such alarm. Usually they throw brickbats alleging that the rights of the minority are forever being trod upon. Furthermore, these peddlers in their tooth-and-nail fight against the reading of the Bible in the schools and the posting of the Ten Commandments in the classroom have not hesitated to ride roughshod over the wishes of the majority.

These paid champions of "brotherhood" and "integration" shout from the public podiums their love for minorities, but in the privacy of smokeroom and boudoir express only contempt for them.

It also has been my observation that when legislation is proposed that would curb Communist subversion against our country, the enemies of free debate protest that the curbing of the liberty of one group opens the door to the restraint of all. Why, then, does not their reasoning apply in this instance?

Anyway, why change the rules? As I have previously stated, and as you well know, the machinery presently exists for the imposition of cloture; all that is necessary, as I also have said, is a vote in favor by two-thirds of the Senate. This is fair and just, except, of course, to totalitarians who claim it is wrong for one minority to insist on free debate, but right for another minority to suppress it. I presume

this is what they call democracy. I would say it is a question of whose ox is being gored.

No, gentlemen, to stifle freedom of speech is to welcome unlimited and uncontrolled mob rule. No good legislation has ever failed because of prolonged debate, but some bad legislation has been stopped by it. It would be morally wrong to deny free speech in the future because of isolated incidents of abuse in the past.

The use of filibuster is perfectly legal and is a basic means of preserving a constitutional right when everything else fails. Therefore, it is imperative that no legislation be enacted now or at any time in the future that would restrict freedom of unlimited debate.

Thank you.

Senator TALMADGE. Thank you. We appreciate your appearing before us.

The next witness is Dr. Amos R. Koontz of Baltimore, Md.

Doctor, we are very happy to have you with us. I think this is the first time I have had the pleasure of seeing you since we served in New Zealand together.

STATEMENT OF DR. AMOS R. KOONTZ, BALTIMORE, MD.

Dr. KOONTZ. Thank you, sir.

Mr. Chairman, members of the committee, my name is Amos R. Koontz. I am a surgeon in the private practice of surgery in Baltimore, and I am here representing nobody but myself. When Senator Talmadge was kind enough to ask me to testify before this subcommittee, I felt it was my duty as a citizen to do so, and I would like to say, before I read my prepared statement, that I am opposed to the proposed change that Senator Saltonstall recommended for this reason:

It sounds very reasonable on the face of it, but it must be remembered that two-thirds of those present and voting may be just a handful of Senators. A treaty requires the affirmative vote of two-thirds of those present with voting capacity, and treaties have been passed with only a handful of Senators present. The same thing might happen if the change proposed by Senator Saltonstall went into effect.

It can be seen that I am opposed to changing the rule, and I hope to give you my reasons for it in this statement.

When this Nation was formed, a new experiment in democracy was started. George III never had a more loyal subject than George Washington until he started to treat the future Father of our Country as a second-class Englishman. Washington would have none of it. It did not take him long to determine that the only way he could maintain his dignity and freedom was to break loose from the mother country. All the world knows that once he made this decision he was inflexible in his determination and unflagging in his efforts to secure our independence. He did this against tremendous odds and under the most discouraging circumstances. This is not the time to recite those circumstances.

It is the time, however, to remind you that once our independence was gained, the Founding Fathers, the framers of our Government, left no stone unturned to safeguard our liberties, so that they would be inherited by each succeeding generation unchanged and inviolate. To this end they labored long and debated freely.

One of the greatest debates in all history was that conducted in the Virginia Convention of 1788 on the ratification of the Constitution—a debate that has been so faithfully and so interestingly portrayed in Beveridge's 4-volume *Life of John Marshall*. All members of the Virginia convention were looking for a method of forming a more perfect union. The only question was whether the Constitution as framed by one of the convention's own members, James Madison, would preserve the rights of the States and the principles of local self-government, or would gradually allow all power to be concentrated in the Federal and Central Government.

Arrayed on the side for ratification of the Constitution were such great statesmen as James Madison, John Marshall, Edmund Pendleton, Edmund Randolph, George Wythe, Lighthorse Harry Lee, and Bushrod Washington. George Washington was not a member of the convention, but favored ratification and lent the weight of his influence for it through correspondence from Mount Vernon. Jefferson was in the then far-away Paris, as Minister to France, and was not involved in the debate at all.

Lined up on the side against ratification were equally great men, such as Patrick Henry, George Mason, author of the Bill of Rights, Benjamin Harrison, Richard Henry Lee, John Tyler, and James Monroe.

Never did any question of personal interest enter into the debate. Never was a debate conducted on a higher plane. Seldom, if ever, in all history have such great orators been arrayed against each other, and, although they were arrayed against each other they were motivated by one common purpose, and one purpose only, and that was what was best for the budding Nation. The only difference of opinion was that those for ratification believed that the Constitution would safeguard the interests of the people and preserve the principle of local self-government. Those against ratification believed that the Constitution would allow the governing power gradually to become concentrated in the Central Government and that this would eliminate the principle of local self-government, making the States mere satellites of the central body.

Were all those great debaters alive today, they would be on the same side fighting against the destruction of the dignity of the individual and the independence of the local community. But these high-principled men never even dreamed of a packed Supreme Court, or of the tyranny of the majority.

After the Constitution had been forged in the fire of patriotism, and had been hammered out on the anvil of statesmanship, it was felt that one of the best safeguards of the rights of the people was in the Senate, the members of which were not elected by popular vote, but by the legislatures of the respective sovereign States which formed the Union. Furthermore, the Senators were elected for 6-year terms and were supposed to form a check against the impulsiveness of the actions of the House, the Members of which were elected for only 2 years and were more subject to the varying whims of the people.

The Founding Fathers must have realized, in spite of their hope that our liberties would be enduring, that freedom must constantly be fought for in order to be maintained. They must have realized that impulse majority, in moments inspired by political expediency, rather than statesmanship, could become tyrannical and impose in-

tolerable abuses on minorities not greatly inferior in number to the tyrannical majority.

It was doubtless this fear of tyrannical whims, no matter what motivated them, which caused the Senate to adopt the rule of unlimited debate, which it has followed for such a long period of time. There are some who say that unlimited debate thwarts the will of the majority. This has happened in only a few instances, and in those instances if the will of the majority had prevailed, it would have resulted in the suppression of the democratic rights of the minority. Which is more desirable, that the majority have their will, or that the minority have their liberties unsuppressed?

No one will question the fact that one of the reasons why certain elements of both parties are now trying to change the Senate rules is to pass the so-called civil-rights bill. If this bill were passed, the effect would be that mentioned above, namely to give the majority their will and to deprive the minority of their freedom.

I do not believe that it can be truthfully said that any deserving person in this country is really denied his civil rights. George Washington felt that he was being denied his civil rights by George III. He fought to regain them and did. There are those in this country who think of their rights only, and nothing of their obligations. Reflect, if you please, what a different kind of citizen George Washington was. The same is true of all citizens with a sense of duty.

I do not believe that people are denied civil rights in this country because of race or color, but because of the way they act. If the actions of any citizen show a due regard for his obligations, his rights will be forthcoming with a will. Actions speak louder than words. There are among us a number of citizens who show such a vast disregard for their obligations as to make them unworthy of citizenship. This cannot be denied, it cannot be blinked, and no amount of sentimental or emotional oratory can make a silk purse out of a sow's ear. On the other hand, the facts should be faced, and every effort should be made to develop a sense of obligation in those citizens who do not have it, in the hope that one day they will be worthy citizens.

One gets a little tired of hearing the statement made that Negroes, by the action of white people, are forced to be second-class citizens. While there is some element of truth in this, it is certainly not the whole truth. There are many first-class Negro citizens. It is well known, however, that too large a proportion of that race must be categorized as third-, fourth-, or fifth-class citizens. If they could be raised to the level of second-class citizens, the entire country would be relieved and the politicians dismayed, because they would have lost one of their familiar vote-getting themes.

In closing, I wish to express the belief that the fairmindedness of our people will deny no man a role for which he has shown himself qualified. Those who are not qualified may become so if they have the will to apply themselves to the task.

I further believe that when the right of any man to stand up and speak his mind hinges on a majority vote of any group, then we have lost our democratic process. Then we can kiss democracy goodbye. That will be the time to look around for a good funeral orator, because when that happens, we will have had it.

Senator TALMADGE. Thank you.

Have you any questions, Senator Javits?

Senator JAVITS. No questions.

Senator TALMADGE. Dr. Koontz, thank you very much for coming and giving us your views.

The next witness is Mr. Thomas F. Cadwalader, attorney, Baltimore, Md.

You may proceed, Mr. Cadwalader.

**STATEMENT OF THOMAS F. CADWALADER, ATTORNEY,
BALTIMORE, MD.**

Mr. CADWALADER. I represent no particular organization. I have been interested in governmental problems for a good many years, and have made some study of them.

Anyone who has studied the American Constitution and its origin, as set forth in the debates of its founders themselves, and in the *Federalist*, must be aware of the fact that the chief function and purpose of the Senate as an institution is to defend the rights and interests of the States, and more particularly of the small and weak States, against the large and populous ones. It was the then small States of New Jersey, New York, Connecticut, and Delaware that forced the compromise scheme of a Senate with equal suffrage of all the States as against a House with representation according to population. If this compromise had not carried against the vigorous protest of the big States, Virginia, Pennsylvania, and Massachusetts, the Convention would probably have broken up. Later, when the amending article was under debate, the same influences forced the adoption of the proviso which freezes the equality of States in the Senate beyond the possibility of repeal.

The Senate was therefore established expressly for the purpose of obstructing legislation hostile to minority interests, and especially to the smaller States. It was elected by the States' legislatures.

The 17th amendment changed the method of electing Senators from the legislatures to the voters of the several States. This gave to the mass vote of big cities the real choice of the Senators from the big States—and some of the small States, incidentally—and the Senators from those States are chiefly answerable to the industrialized and urban centers, and tend to reflect their wishes. The small towns and rural parts of the country can hope to rely only on the Senators from the agricultural States, and these are getting fewer all the time.

The checks and balances by which the framers sought to restrain the excesses to which governments are always prone have therefore been much weakened in the National Legislature. At the same time, the legal and constitutional checks to be found normally in a judiciary sworn to support and defend the Constitution have become of little value. The reasons for this are perhaps more obscure, but the fact is quite obvious. Even if in some spheres such as the right of free speech it may appear that individuals are being amply protected by the courts, it is certainly true that individual rights to property, and the very basic right of local self-government, have suffered curtailment such as the framers never dreamed of.

The powers of government when exerted in the direction of collectivism are rarely, if ever, restrained by the Supreme Court, and

even the right of free speech is protected chiefly when the speaker advocates collectivism in some of its numerous forms.

Anything, therefore, that gives States or communities that are in the minority some sort of chance to defend their natural rights and the personal liberties of their people against the overwhelming power of a mighty government is to be safeguarded as a means of defending what liberty remains. For if liberty goes, it matters not whether fascism or communism takes its place. In either event, the days of American greatness will have ended.

One of the principal safeguards remaining is a Senate based on the equal suffrage of the several States and the right of almost unlimited debate of its members. No instance can be recalled in our history where this right of unlimited debate—or filibustering, if you choose to call it so—has operated to the serious injury of the country, except in the opinions of a few disappointed people.

In the past it saved the country from a renewal of the orgies of reconstruction when the force bill was defeated in the last decade of the 19th century. Actually, the shame and crime of reconstruction itself could not have occurred if the several States had been allowed the senatorial suffrage that the Constitution guaranteed to them.

If the aftermath of the Civil War had been as the aftermath of Great Britain's war against the Boers, the hatred and disunity that now, 100 years later, still exist and increase between the sections of the Union would long ago have been forgotten.

A free country must be governed by the consent of the governed, as the Declaration of Independence proclaimed. Otherwise, it is not free. The right of cloture in a parliamentary body is only a right to impose the will of the dominant party on the unwilling minority. It is not necessary ever to invoke it unless the minority is convinced that the action under debate is so oppressive that it never should be advocated by any person professing his loyalty to free institutions.

Take the present case of the so-called—and miscalled—civil-rights bill. If the civil rights of citizens, white or black, cannot be protected in the ordinary course of law by the governments of the States in which they live, then we should abolish the United States altogether and substitute an all-powerful dictatorship in the hope that it might prove beneficent and treat everyone alike. Has any dictatorship done so? Yes; a few, for a short time, perhaps. But you and I do not believe in taking this risk. However, if you make the protection of civil rights, however you define them, the duty of a central government through its appointed agents, attorneys, judges, marshals, and detectives, all of whom are appointed, none of them elected, you are really opening the road to the development of a purely dictatorial form of rule, from which you may find yourselves beyond the point of possible return.

This bill is aimed now at the South, but its principle is equally threatening to every part of our people.

If you overthrow the possibility of talking to death measures of this nature, then you are voting to abandon one of the few remaining lines of defense established by the sagacious strategists of the Constitution, and those who so vote may thunder against communism as much as they please—they will have presented it with a very useful key to unlock the storehouse of freedom and despoil it.

Senator TALMADGE. Any questions, Senator Javits?

Senator JAVITS. No, thank you.

Senator TALMADGE. Mr. Cadwalader, we thank you very much for appearing and giving us a very fine statement.

The next witness is Mr. Clarence Mitchell, director of the Washington bureau of the National Association for the Advancement of Colored People.

Mr. MITCHELL. Thank you, Mr. Chairman.

Senator JAVITS. Glad to have you here.

Senator TALMADGE. Proceed as you will, Mr. Mitchell.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR OF THE WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Gentlemen of the subcommittee, thank you for this opportunity to testify on the question of amending rule XXII. This statement is brief because there is very little to be said on this subject that has not been said before.

The National Association for the Advancement of Colored People has consistently supported the proposition that a majority in the United States Senate should have the power to limit debate by cloture. At our 48th annual convention, just concluded in the city of Detroit, our delegates again went on record in favor of a Senate rule which would make it possible to stop a filibuster by a majority vote of the Senators present and voting.

Senate Resolution 21, introduced by Senator Wayne Morse, embodies the principle approved by our convention in that it would require a majority of the Senators present and voting to obtain cloture. On the other hand, Senate Resolution 17, introduced by Senator Douglas, Senator Ives, the distinguished junior Senator from New York, Mr. Javits, who is a member of this subcommittee, and others, would also be an effective change that would sound the death knell of filibustering.

Every Member of the Senate knows that there is a vast difference between full debate and the filibuster. When discussion on the motion to take up the proposed civil-rights bill began on July 8, the Senate Chamber emptied as if by magic. Those who are wise in the ways of Washington knew that speakers would not rely on logic to achieve their goal of killing or emasculating the bill. Instead, it was their intention to force the majority of the Senate to its knees by lengthy speeches, threats of holding up necessary legislation, and liberal use of parliamentary tactics that would cause delay and confusion. Most of the speeches will repeat the wornout phrases about hordes of investigators, opening Pandora's boxes that are filled with Federal bayonets and possible bloodshed. Few, if any, will be on the merits of the bill.

If Members of the Senate were convinced that civil-right opponents were willing to engage in fair debate and vote on the merits of the bill, the record of attendance would be much better.

No one who wishes to preserve the processes of democracy would advocate that fair debate be curtailed. At the same time, no one who

has observed the workings of the Congress could describe the filibuster as an exercise of legitimate rights under free debate.

Even the proponents of the filibuster are ashamed to admit, in Washington, that they advocate using the ugly and disgraceful weapon of endless and irrelevant talk as a means of killing a bill. Up here, where the television cameras are grinding and the flower of American journalism watches from the Press Gallery, advocates of the filibuster use parlor language such as "extended debate" and "lengthy consideration" to describe what they intend to do.

Here is what they say when they are talking directly to the folks back home—and I now quote:

The national association for the advancement of the colored race is allied with the CIO, the Americans for Democratic Action, and other groups that call themselves liberal groups. They came up to Congress a few years ago with a program. They wanted FEPC, antipoll tax, antilynching bill, antisegregation statutes of all kinds. Those bills passed the House but, when they got to the Senate, they were met head on with a filibuster. For several years they were filibustered, and after 1950 they were all blocked in the Civil Rights Committee. Do you know how? Why, fate gave me the opportunity to play a crucial role in that controversy.

Late in 1949, Howard McGrath, Senator from Rhode Island, was appointed Attorney General of the United States, and, because of seniority, I was maneuvered into chairmanship of the Civil Rights Subcommittee. Yes, Eastland, of Mississippi, became the boss of the committee that had all the civil-rights bills, and ever since then the CIO and these organizations have been yapping and yapping that I was arrogant and high-hatted with them, and so I was, and they said that I broke the law, and so I did.

You know the law says the committee has got to meet once a week, and there I was, chairman of a committee, and there were northerners up there, Yankees, that didn't know anything about the question, who were lined up against us. You know what happened? Why, for the 3 years I was chairman, that committee didn't hold a meeting. I didn't permit them to meet. My friends, they said I broke the law when I did it, but I had to protect the interest of the people of Mississippi.

We have a rule in the Senate that when you report a bill out of a committee, you have got to have the original bill, got to have the original thing there before you. I was afraid that they'd call a special session of that committee and vote the bills out behind my back. You know what happened? I had special pockets put in my pants and for 3 years I carried those bills around in my pockets everywhere I went, and every one of them were defeated and the CIO and those liberal racial groups yapped and yapped and yapped. But their yapping didn't get them anywhere. My friends, when they failed to get their program through Congress, they turned to the United States Supreme Court with their schemes.

The foregoing is an excerpt from a speech delivered by Senator James O. Eastland when he was a candidate for reelection in Mississippi. Senator Eastland, of course, would not make that kind of speech in New York or Pennsylvania during an election. He would know that such talk would be likely to defeat Democrats who seek election in those States. Now that the election is over and the votes of Pennsylvania and other Northern States have helped to make him chairman of the powerful Judiciary Committee, he has extended the filibuster technique from the Senate floor to the committee room, just as he said he would. The success he has had to date suggests that when a workable cloture provision is established for use on the Senate floor, the Senate should take a look at ways of correcting dilatory tactics in committees.

Those of us who seek the passage of civil rights legislation expect to win this year. But the victory will be in spite of the present

cumbersome rule XXII. A civil rights bill will pass because of the strong and dedicated leadership now being given by Senator William Knowland, Senator Paul Douglas, and others who have long and faithfully worked for greater freedom for all Americans.

In closing, I offer this bit of advice for the promising young men of the South who are now Members of the Senate.

By following the filibuster trail, those who wish to kill legislation that they do not like inevitably become overimpressed with their own strength and importance. Filibusters cannot succeed unless there is acquiescence and weakening on the part of the majority. When the majority is determined to accomplish its will, it can permit those who filibuster to talk at length until they wear themselves out. It is important to remember this because there are some proponents of the filibuster who say that it is a bulwark of defense for small States and minorities. Actually, of course, there is no way for small States and minorities to defend their rights by use of the filibuster if the majority of the Senate is determined to bring the issue to a vote.

In 1948, Senator Clyde Hoey of North Carolina was then leader of a move to debate the Chaplain's prayer for the purpose of killing a proposed fair employment practice bill. This debate consumed 2 weeks and at the time there were some who were amused and tolerant of the action of Senator Hoey and his colleagues. But this is a different day and even in the South there are many citizens who do not want their Senators to be famed chiefly for unfair practices of obstruction.

The day of achieving national prestige by use of the filibuster is past. It is no longer possible to be a national hero merely because one has strong lungs and the determination to speak indefinitely. Also, as the right to vote is strengthened in the South and the restrictions against colored citizens are eliminated by court action, executive policies, and legislation, the possibility of having a President or Vice President from the South will increase.

Inevitably, the country will want to know whether the candidate is concerned with the welfare of all of the people or whether he has achieved prominence by catering to a small group of those who are interested in destroying the rights of persons because they happen to be colored or members of some other minority group.

Senator Kefauver's strong showing in the Northern States when he was campaigning for the Presidency shows that voters are increasingly interested in what a man stands for, rather than where he comes from.

The Senators who are tempted to join the present filibuster may well ask themselves the question, "What profiteth it a man to win a talkathon in 1957 if it costs him a chance to go to the White House in 1960 or 1964?"

Senator TALMADGE. Have you any questions, Senator Javits?

Senator JAVITS. Mr. Mitchell, I am much interested in what you have said at the end of your statement about a change of view in the South, and a change of view in the country as respects Senators and other distinguished officials from the South.

I might say to you that this is a development which, regardless of party—I am a Republican, and probably we won't be too strong down there for some time, though we are trying—I welcome, and it is my hope that what is going on now will give us a little better idea through-

out the country of the real, fundamental southern attitudes and whether they have been affected by modern conditions.

So I am very much interested by that.

I assume you make the statement based upon some background knowledge, by virtue of all your connections and contacts down there.

Mr. MITCHELL. Yes, Senator Javits, I have had the good fortune of living in the South, and also of having married into a family that has its origin in Mississippi. I get down there with great frequency. Therefore, I think I know something about the currents that are coming to the fore.

I have never believed that there are people in the South who are unalterably opposed to any changes that would represent granting full citizenship rights to colored people. I believe if the people were free to choose—I think this has always been true—they would be willing to give consideration to members of the Negro group as equal citizens.

Unfortunately, the political situation in the South is such that because the Negroes are not allowed to vote, it does not pay, in many States, to make any particular appeal to them or to make any special effort to get them to come out to the polls. On the contrary, the opposite is much better for political success.

However, I believe that, as the industrialization of the South continues and as the population shifts take place, it will no longer be possible to define the South as a region which has different customs and mores from the other regions. I think there will be such similarity that we will at least be one great people in this country, interested in protecting ourselves against the common enemy who may be beyond our shores, and dedicated to the principle that we are going to make this the greatest democracy in the world.

Senator JAVIS. Now, do you believe that the change in the so-called filibuster rule, rule XXII, will make any real contribution to that objective?

Mr. MITCHELL. I am certain it will. In my opinion, the one reason why some of the Senators from the South must engage in the filibuster is because it represents the political lifeline, so to speak. If a filibuster begins and they don't participate in it, they are earmarked for political elimination.

I think anyone who would talk with Senator Kefauver would know, because I have talked with him and he has said this, that when he was a candidate for reelection last time he was running for the Senate, he was opposed by a person who injected the race question, filibuster question, all these things, into the campaign. Fortunately, he won, but there might be other States in which it would not be possible for a candidate to win.

I think if we can change this rule, it definitely will have a very healthy effect.

Senator JAVIS. Now, what is the Negro population of the 9 so-called Deep Southern States?

Mr. MITCHELL. I think it is somewhere between 6 and 9 million.

Senator JAVIS. You do not have the figure?

Mr. MITCHELL. I can give you the accurate figures.

Senator JAVIS. Would you submit for the record a list of the white and Negro populations in the 9 so-called Deep Southern States?

Mr. MITCHELL. Yes; I certainly will.

Senator JAVRS. Thank you very much.

(The information referred to, subsequently supplied by Mr. Mitchell, is as follows:)

State	Total population	Negro population
Alabama.....	3,061,743	979,617
Arkansas.....	1,909,511	482,004
Florida.....	2,771,303	603,101
Georgia.....	3,444,578	1,062,762
Louisiana.....	2,633,316	886,833
North Carolina.....	4,061,929	1,047,353
South Carolina.....	2,117,637	822,077
Virginia.....	3,328,690	784,211
Mississippi.....	2,178,914	968,494

Source: 1930 census.

Senator TALMADGE. Thank you for appearing before us, Mr. Mitchell.

Although it is nearing the hour for the Senate bell, Dr. Garman says his statement will be very short and I think we will get through in time. We can also insert at that time any other statements that we have. I have a number of them.

Dr. Garman represents the Associated Gospel Churches, Wilkinsburg, Pa., of which he is president.

You may proceed, Dr. Garman.

STATEMENT OF DR. W. O. H. GARMAN, PRESIDENT, ASSOCIATED GOSPEL CHURCHES; MEMBER, EXECUTIVE COMMITTEE, AMERICAN COUNCIL OF CHRISTIAN CHURCHES, WILKINSBURG, PA.

Dr. GARMAN. Thank you, Mr. Chairman. There is one correction I shall make to that statement as I read this very, very brief statement, and I hope it will be a little relaxing for you after the long ones you have heard. Coming from a preacher, it may be a surprise.

The following statement is presented in behalf of the American Council of Christian Churches and one of its constituent bodies, the Associated Gospel Churches, both of which were invited to express their views before the Senate special subcommittee considering proposed amendments to rule XXII of the Standing Rules of the Senate.

The undersigned is a member of the executive committee of the American Council of Christian Churches and president of the Associated Gospel Churches. He was especially requested to represent both bodies. The American Council of Christian Churches represents a combined total membership of 1,580,000.

While we deplore some of the abuses of free debate such as reading no end of printed material not germane to matters under discussion, we do not approve of any curtailment of the right to free and full debate, especially of those representing the minority opinion or the opposition party.

We fear that limitations of free debate might result in unbridled majority rule, gag rule, censorship, or in the loss of our cherished freedoms and the further entrenchment of power in the hands of the President and Supreme Court, both of which we believe need to be curbed.

We therefore are opposed to any amendments to rule XXII which would limit or jeopardize free, full, and proper debate.

Senator TALMADGE. Have you any questions, Senator?

Senator JAVITS. Would you be good enough, for the record, Dr. Garman, to state what was the authority through which the American Council of Christian Churches and the Associated Gospel Churches acted in giving you this representation.

Dr. GARMAN. Through their executive committees.

Senator JAVITS. They took a vote?

Dr. GARMAN. That's right.

Senator JAVITS. And directed you to give this testimony?

Dr. GARMAN. Yes.

Senator TALMADGE. Dr. Garman, we appreciate you being with us and appreciate your patience in waiting so long to testify.

(Additional information subsequently received from Mr. Garman is as follows:)

ASSOCIATED GOSPEL CHURCHES,
July 11, 1957.

HON. HERMAN E. TALMADGE,
United States Senate,
Washington, D. C.

DEAR SENATOR TALMADGE: It was a pleasure to appear before your committee on July 9, and to express the sentiments and convictions of the two groups I represented.

My statement represented the studied convictions of the rank and file of our constituents. Repeatedly in national conventions we have drafted resolutions and taken action which supported what was contained therein. I had hoped that this would be elicited in the questions which would have been asked me by members of your committee.

Due to the fact that you men were called to the floor of the Senate I was not questioned at length and these facts were not brought out. Senator Javits did ask one question which might leave the impression that the statement I submitted merely represented the opinion and convictions of the officers of the two bodies I represented. This is not true. They represent the preponderance of opinion of all our constituent bodies as expressed repeatedly in national convention.

Since this is the case, will you kindly append this letter to my statement so that it shall be made part of the record and let me know that this has been done. Thank you.

May the Lord bless, empower and guide you in this great emergency.

Yours most sincerely,

W. O. H. GARMAN, *President.*

Senator TALMADGE. At this time we will insert all the statements in the record. I have a number here.

Senator JAVITS. I will just hand you this one, too. This is from a former witness who supplements his testimony.

Senator TALMADGE. There is a statement from Dr. Edward A. Rumely; one from the Defenders of the American Constitution, Inc.; a statement from Bernard Weitzer, national legislative director, Jewish War Veterans of the United States of America; a petition from St. Louis, Mo.; a letter from Fidelity Council, No. 22, Sons and Daughters of Liberty; and letters from Mr. Robert Bent Taft, Chicago, Ill.; and Mr. Irving Brant.

(Mr. Brant's letter may be found following his testimony, on p. 181. The other communications referred to may be found in the appendix, in the appropriate exhibit.)

Senator TALMADGE. If there is nothing further, the subcommittee is adjourned.

(Whereupon, at 12 noon, the hearing was adjourned.)

PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE

TUESDAY, JULY 16, 1957

UNITED STATES SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D. C.

The subcommittee met, pursuant to recess, at 9:35 a. m., in room 104-B, Senate Office Building, Senator Herman E. Talmadge (chairman of the subcommittee) presiding.

Present: Senators Talmadge (presiding) and Javits.

Also present: Langdon West, special counsel to the subcommittee; Darrell St. Claire, professional staff member; Robert S. McCain, professional staff member.

Senator TALMADGE. The subcommittee will come to order.

The Chair desires to announce that in a very few minutes he must leave for other committee meetings, and at that time Senator Javits has agreed to continue the hearings.

At the conclusion of the testimony, I would like to insert in the record further statements that I have received, and two other statements that have been received by the subcommittee counsel. They will be inserted in the record at the appropriate place.

Do you have any insertions at this time, Senator Javits?

Senator JAVITS. I will have an insert that was sent to me. Clarence Mitchell, of the NAACP, sent me a table of populations and the Negro elements in populations in Southern States, and I will put that in the record.

(The table referred to may be found in Mr. Mitchell's testimony, on p. 255.)

Senator TALMADGE. The first witness is the distinguished Senator from Alabama, Mr. Hill. Senator Hill, we are pleased to have you with us this morning. You may proceed with your statement.

STATEMENT OF HON. LISTER HILL, A UNITED STATES SENATOR FROM THE STATE OF ALABAMA

Senator HILL. Thank you very much.

Mr. Chairman and gentlemen of the committee, I want to express to the committee my appreciation of this opportunity to be heard on proposals to change the rules of the Senate.

I recognize that the history of free and unlimited debate has been well threshed out before this committee in these hearings. I have noted the testimony, in brief, of the different witnesses, and I real-

ize your record is pretty well complete with all the historical facts and, I imagine, most of the arguments in the matter.

We think of the Senate as a check, and we recall that Benjamin Franklin—and there was no wiser man than Franklin—spoke of the Senate as the saucer into which the hot coffee was to be poured to give it time and opportunity to cool. The House of Representatives, if at any time it took any hot action, if it acted with too much speed and did not thoroughly consider and thresh out the full significance and effect of that action, had always this saucer waiting for the measure to cool.

We recall, also, that Mr. Gladstone, in speaking of the Senate, said:

That remarkable body, the most remarkable of all the inventions of modern politics.

Now, Senators, what is it that makes the Senate remarkable? Nothing more nor less than the free and unlimited debate in the Senate. If you take from the Senate this right of free and unlimited debate, if you invoke cloture in the Senate, then your Senate will be no more than the House of Representatives or any other legislative body that we might consider. It is remarkable, as Mr. Gladstone said, only because of this free and unlimited debate.

The thing that I wish to emphasize to this committee with all the emphasis that I can bring to bear is that if you deny free and unlimited debate in the Senate of the United States you have changed the character of the Senate of the United States. You cannot change the character of the Senate of the United States without changing the Government of the United States.

So, you gentlemen in considering these resolutions here today are not considering some simple matter of procedure in the Senate, some simple change of its rule. You are considering a proposed change in the Senate that would mean a fundamental and basic change in the Government of the United States as we have known that Government from the beginning down to the present.

That is the question before this committee. Are you going to change our Government—this constitutional Republic that we have had all these years and under which we have grown to be the mightiest nation that the sun ever shown upon, and under which our people have enjoyed the greatest freedom ever known to mankind?

Mr. Chairman, the right of a Senator to get on the floor, to present all the facts in connection with an issue, to turn the light of truth and justice and fairness on that issue goes to the very heart of the freedoms of the people of the United States and to the protection not only of the freedom of the people and of the individual citizens but to the protection of the rights of the several States, but to the protection of the rights of minorities of all kinds.

Yet it is suggested here that this freedom of debate be cut off, be denied by less than a two-thirds vote of the full Senate.

Senators, as you recall, the Founding Fathers—men like James Madison, Gouverneur Morris, and George Washington—had a great fear when they brought this Government into being. That fear was the danger of what they termed party spirit—as George Washington expressed it in his Farewell Address, “the baneful effects of party spirit.”

Let me call to your attention an excerpt from his words. Now, weigh this well, because, in my opinion, the thing that has averted this danger, the thing that has averted the baneful effects of party spirit that Washington feared, has been this very free and unlimited debate in the Senate of the United States. George Washington in his Farewell Address said to us:

I have already intimated to you—

that is us, gentlemen; he is talking to us—

the danger of parties in the State with particular reference to the founding of them on geographical discrimination. Let me now take a more comprehensive view and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed, but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy. Without looking forward to an extremity of this kind, which nevertheless ought not to be entirely out of sight, the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

As one who served in the House of Representatives for a good many years, I have seen this party government of which Washington spoke. We know that regardless of which party is in control, the Speaker and the party leader, the chairman of the Rules Committee, and perhaps 1 or 2 others get together in the Speaker's office, they determine what shall be done, and it generally is done the way they planned. There is no free and unlimited debate in the House of Representatives. Physically, there cannot be any, for the membership is too large.

However, we can observe in the House of Representatives the very thing that Washington warned about, and the thing that has saved us has been this free and unlimited debate in the Senate of the United States.

We have had a good deal of discussion of late about action by a two-thirds majority or some other majority. Let me remind you gentlemen of the time when the majority party, which happened to be the Democratic Party, had 76 out of the 96 votes. The Republican Party had only 16 votes. The other four votes were among other parties such as the Progressive Party and the Farmer-Labor Party.

Perhaps next time it will be the Republican Party that will have the 76 votes. We do not know. That is not what is important. What is important is that parties do control this body so far as numbers are concerned, and we must have the restraint to keep party spirit from running wild, that we may not suffer from the baneful effects of that party spirit.

Let us remember that we never know what is going to happen. The gentlemen of the minority certainly did not think the other party would be in the majority today. Nobody knows what will be the story 2 years from now, and I say this to you: That some of those who now press hardest, some of those who insist most determinedly for changes in the Senate rules and denial of this free and unlimited debate, may be the very ones who tomorrow will find that this free and unlimited debate is needed for the protection of their rights.

Let us never forget that under the free and unlimited debate of the Senate we went through all the terrible War Between the States. We fought that war with free and unlimited debate. We fought World

War I which, up to that time, was the greatest war in the history of the World. Then, we fought World War II. Nothing in the history of the world has been comparable to our deeds and accomplishments in that war. We fought the war against the most terrible depression ever dreamed of back in the early thirties. We didn't have to invoke any cloture to win these great wars. We won these wars with a free and unlimited debate.

We know the conscientiousness, the sense of responsibility, the devotion to duty that always triumphs among the membership of the Senate of the United States. Our country is great not only because of a particular array of laws and prohibitions. Our country is great also because of the character of its people and the character of the men who represent those people in its Government.

If you put an end to this free and unlimited debate, you not only open wide the door but you extend the invitation for men to depart from that high sense of responsibility and that devotion which every Senator carries now in his heart. We will slip back into this very evil of the party spirit. How often in the House of Representatives have we heard the appeal, "We must go along with the party." This occurs because party government is the means and the way of the House of Representatives.

I am pleading today that we not retreat to this position of party government, that we let the Senate of the United States remain as the great forum of the American people and of the constitutional American Republic.

Has anyone in all these hearings been able to suggest a single important or beneficent measure that has been killed because we had free and unlimited debate in the Senate of the United States?

What reason have we today, what arguments have been presented to this committee, that would justify us in changing the character of the Senate, in changing this American constitutional republic as we have known it?

I have heard of no bill, no measure, that has gone down that should have been passed. To be sure, our rules have brought about some delays, and I would be the last to deny that there have been some abuses. But, as long as human nature is human nature and is not perfect, we shall have abuses. However, I wish to emphasize that the benefits from free and unlimited debate far outweigh the abuses that may have occurred under it.

The most famous measure to my section of the country that has ever been defeated by free and unlimited debate was the Force bill of 1890, a bill somewhat in the same category as the civil-rights bill that is now before the Senate.

While I advert to civil-rights bills, I do not care at this time to go into a discussion of them. But every Senator must surely know that there has never been a debate on civil-rights bills in which Senators who are far removed from any sectional thought in the matter—Senators who considered the bill only on the basis of its constitutionality and what it might mean for the welfare of the whole country—have not proclaimed with great emphasis the evils of the bill.

One of the greatest constitutional speeches ever made in the Senate of the United States was the speech made by the late Senator from Idaho, William E. Borah, on the unconstitutionality of the anti-lynching bill. No one could accuse the Senator from Idaho, Mr.

Borah, of having any prejudices or any preconceived notions in the matter. He simply weighed the bill on the scales of constitutionality, and he was so shocked by the unconstitutionality of the bill, its contravention of the spirit and the letter of the Constitution, that he was moved to make this great and powerful speech on the floor of the Senate showing the unconstitutionality of the bill.

Another of the great speeches made on the floor of the Senate was the speech of the senior Senator from Wyoming, Mr. O'Mahoney, on the unconstitutionality of the anti-poll-tax bill. When we reflect upon all the rights guaranteed in the Bill of Rights we recall that other bills that have been blocked in recent years by the rule in favor of unlimited debate, such as the last FEPC bill, which the Senate debated, served to deny our people such basic rights as the right to trial by jury, the right to confront one's accusers, and the right to be indicted by a grand jury.

As I have said, the most famous bill ever defeated by the free and unlimited debate was the Force bill introduced in the House of Representatives and valiantly fought for by the late Senator Henry Cabot Lodge, Sr., of Massachusetts. He fought for the bill in the House of Representatives. When he came over to the Senate, he was very much opposed to free and unlimited debate and favored cloture.

After he had served in the Senate a while, after he had had the experience of that service, after he had grown in wisdom and knowledge and experience—and as we know he was one of the most erudite men ever to sit in the Senate of the United States, a great student not only of our own Government but of all of the governments of the world—he gave to us and to our country the benefit of his ripened and seasoned and mature judgment.

Let us consider a few excerpts from what Senator Lodge said:

It is not necessary to trace the long struggle between these opposing forces which ended in the most famous compromise of the Constitution of which the Senate was the vital element and which finally enabled the Convention to bring its work to a successful conclusion. It is sufficient here to point out that, as the Constitution was necessarily made by the States alone, they yielded with the utmost reluctance to the grants of power to the people of the United States as a whole and sought in every way to protect the rights of the several States against invasion by the national authority. The States, it must be remembered, as they then stood, were all sovereign States. Each one possessed all the rights and attributes of sovereignty, and the Constitution could only be made by surrendering to the General Government a portion of these sovereign powers. In the Senate, accordingly, the States endeavored to secure every possible power which would protect them and their rights. They ordained that each State should have two Senators without reference to population, thus securing equality of representation among the States. They then provided in article V of the Constitution that "No State without its consent should be deprived of its equal suffrage in the Senate."

What I am pleading for today is that the State of New York or Georgia, or Arizona or California or any other States shall not be denied its right to be heard in the United States Senate.

Then Senator Lodge went on:

Except on some rare occasions, the Senate has been the conservative part of the legislative branch of the Government. The cloture and other drastic rules for preventing delay and compelling action which it has been found necessary to adopt and apply in the House of Representatives have never, except in a most restricted form, been admitted in the Senate. Debate in the Senate has remained practically unlimited, and despite the impatience which unrestricted debate often creates, there can be no doubt that in the long run it has been

most important and indeed very essential to free and democratic government to have one body where every great question could be fully and deliberately discussed.

Senator Lodge continues:

The Senate, I believe has never failed to act in any case of importance where a majority of the body really and genuinely desired to have action and the full opportunity for deliberation and discussion characteristic of the Senate has prevented much rash legislation born of the passion of an election struggle and has perfected still more that which ultimately found its way to the statute books.

And then he closes with these words:

The Members of the United States Senate have always cherished the freedom of debate which has existed in this Chamber. Senators have been reluctant to adopt any rule of cloture, and, even after the present rule was adopted in 1917, they have been reluctant to invoke it. Cloture is a gag rule. It shuts off debate. It forces all free and open discussion to come to an end. Such a practice destroys the deliberative function which is the very foundation for the existence of the Senate. It was the intent of the framers of the Federal Constitution to obtain from the upper Chamber of the Congress a different point of view from that secured in the House of Representatives. Thus the longer time, the more advanced age, the smaller number, the equal representation of all States. Careful and thorough consideration of legislation is more often needed than the limitation of debate.

Gentlemen, Senator Lodge knew, even as we know, of the temptations and the pressures that present themselves. He knew that a party in control, perhaps at a given moment somewhat intoxicated with its new-found power or perhaps forgetful of the great responsibility of power, may be whipped on by pressure groups or spurred by political expediency to act without full and complete deliberation and mature consideration and do the very thing that George Washington warned us against.

I want to close with this quotation from the late Senator Charles McNary, who was not only a great Senator, much honored and beloved and esteemed by his colleagues as the leader of his party in the Senate, but who also was the vice-presidential nominee of his party in 1940. He said:

Every Republican except two were for the bill from sunrise to evening star and from evening star to sunrise in order to have the bill passed. But, Mr. President, I am not willing to give up the right of free speech and full and untrammelled opportunity for argument. That right is the last palladium. It is the last impregnable trench for those who may be oppressed or who are about to be oppressed. It may be the last barrier to tyranny.

Those who now press for this change, who would deny this free speech, may well be the first ones who will be in need of the protection of free speech.

We recall the words of Benjamin Franklin when he was asked what the Constitutional Convention had done. His answer was: "We have given you a republic, if you can keep it."

Gentlemen, for 168 years we have kept this Republic. I am today pleading with you: Let us continue to keep it as it has existed and as we know it today with all its benefits and blessings for our people.

Senator TALMADGE. Thank you very much, Senator Hill, for your fine statement.

The next witness then is Mr. Bertrand L. Comparet, Citizens' Congressional Committee, San Diego, Calif.

Mr. Comparet, will you just have a seat there and proceed informally?

STATEMENT OF BERTRAND L. COMPARET, CITIZENS' CONGRESSIONAL COMMITTEE, SAN DIEGO, CALIF.

Mr. COMPARET. Mr. Chairman, might I inquire first as to the matter of time limits on it? And if I do not have time for everything—

Senator TALMADGE. The time limit for each presentation has been set at 10 minutes for the remainder of the hearings. We want to be as courteous as we can to all witnesses. If some witnesses desire to go a few minutes over the time, I do not think either the Senator from New York or myself would object.

We would be happy to insert any pertinent material that you have, if you desire to do so, in the record, Mr. Comparet, in the event you do not have time to complete your testimony.

Mr. COMPARET. Yes, sir. I have turned over to Mr. West a copy of my complete statement. There will not be time to give all of it orally here.

Senator TALMADGE. If we do not get to all of it, it will be inserted in the record.

Mr. COMPARET. Thank you, sir.

I want to register our opposition to these proposed amendments to rule XXII, because I believe that they represent a real threat to American liberty.

Now, my opinion, of course, means nothing unless I back it up by the reasons for it.

The situation has reached the point where the Senate of the United States is the one remaining guardian of the liberties of the American people; and the Senate's job historically, from the beginning, has not been to hastily rubberstamp all the unwise and sometimes vicious legislation that organized pressure groups try to jam through. The Senate's job has been to stop all bad legislation.

George Washington himself likened it to the matter of pouring your too-hot tea out of the cup into the saucer and giving it a chance to cool off.

And these proposed amendments are all an attempt to take away that, and to enable organized pressure groups to jam through vicious measures without time to expose what is wrong with them.

The fact is that the United States right now is actually undergoing revolution. We have been taught to think revolution is always a violent overthrow of the Government. It is not. Revolution is the substitution of a new political or social order by means other than the lawful and honest amendment of the Constitution.

And the Socialists have discovered that, although they cannot hope to succeed by violent revolution, they can have a revolution by subversion and hypocrisy. Their first method is the historic one of infiltration of the major parties and by the use of minority group pressures to appeal to the party, "Now, get a few more votes added to you by selling out the majority to get the votes of this minority group." They infiltrate and take control of major parties—the historic method of the "tail wagging the dog."

They did it in England, and introduced some terribly vicious measures there. The English people woke up and turned the Labor Party out of office. The Socialists learned their lesson from that. They decided the thing to take over and infiltrate and corrupt or subvert was a group that cannot be turned out of office by the voters. In other

words, if you can just subvert the Supreme Court, the subversion of the rest of the Constitution follows automatically.

There is no longer any hope, as there was in the past, that when vicious and unconstitutional measures once get by a legislative body you have a backstop in a Supreme Court which will correct those things. We might just as well face the issue on it. We have got to eventually. We might just as well be honest about it now.

The mere fact that a group of nine men almost entirely without judicial experience—the Supreme Court Chief Justice has never been so much as a country justice of the peace trying \$30 lawsuits before he was elevated to that position. A group of men appointed because of their political activity and appointed to continue their political activity under the guise of judicial decision.

Those men are undertaking to give us a new Constitution, created in their own image, and they are doing it under the guise of so-called interpretation—that interprets out and perverts the whole spirit of the Constitution.

Who are they kidding when they tell us that in more than a century and a half of our existence, during which the great giants of American legal history have sat on that bench, no one but the present little group of nine men ever understood what the Constitution was about? They know better than that.

When they can tell us, with no one legal authority cited—because every legal authority on the books is entirely against them—when they can throw all that out the window, when they can disturb the constitutional rights of the States that have been honored by their more honorable predecessors on the bench for two generations, when they can throw that out of the window with no authority save that of a more or less Communist alien, a man who may not have a technical membership in the party but who spouts its doctrines, a man who has said our American Constitution is, to use his own words, “a plot against the common people,” when with that as their only authority they can throw this out on the specious ground that “we cannot turn the clock back to 1898” in order to continue in force the decisions of their own Court previously made, what are you going to say when they make their next decision that they cannot turn the clock back to 1791, when we adopted the Bill of Rights, in order to keep the American constitutional liberties of freedom of speech, freedom of the press, freedom of religion, and the right to jury trial, and the rest of your Bill of Rights? That is what you are going to get next.

Now, I am a lawyer. I know that somebody has to lose every lawsuit. I know that there are times when you have a close decision, and somebody has to make a decision. I do not have the idea that every decision I do not agree with is wrong or corrupt. I have long since learned better than that.

But, likewise, nobody can kid me when they take a sanctimonious air and subvert the Constitution and say, “Oh, this is nothing but interpretation.” You cannot interpret contrary to its language and fool anybody who knows the law. And that is what they have done.

Now, the one guardian of the liberties of the American people remains the Senate. I do not have to tell Senators or Congressmen what pressures they are under constantly from these organized minority pressure groups. You all know just how many hours, probably, it has

been since you were last threatened with political reprisals if you do not vote for this measure or that which you knew was unwise and perhaps even vicious. Those things have jammed through evil legislation.

Now, it is against this that the public desperately needs that those particular legislators who are not vulnerable to that kind of pressure be left free to expose the inequities of these bills.

And there is where this gag-rule censorship would do its evil work. Whenever one of these things comes up supported by organized minority pressure groups, it is most necessary that those things be examined very carefully and very thoroughly. You have got to look into these things. Who are the forces, what are the motives behind that kind of a bill? What advantage do its supporters seek to get by this bill? What effect is it going to have upon the rest of the country and upon those who have some reason to oppose it? What are the basic philosophies of government involved here? Is one side or the other seeking to go out of proper constitutional bounds?

All of those things need to be thoroughly dragged out into the light of day, and no man living can do that in 1 hour's time.

Now, of these particular bills or resolutions, Senate Resolution No. 21 would allow gag rule censorship to be applied by just 25 votes out of the 96 Senators—and even less if some of those present failed to vote, which may very well happen. Some of those present may be under a pairing agreement. Yet their presence counts to make up a quorum. Some of them may just not have the courage to stand up and be counted, and may not vote. So that even less than 25 votes can deny the American people the right to have these things dragged out into the light of day.

Senate Resolutions 17, 30, and 32 would impose this gag rule by only 33 votes—and, again, less if some of those present failed to vote.

Senate Resolutions 19 and 28, which are the least obnoxious of the lot, require a bare majority vote to apply a gag rule.

But I want to say this: When any proposed legislation is so vicious and unfair that 49 percent of the Senators are opposed to it, that is just the time when gag rule is most dangerous. That is the thing that needs to be thoroughly exposed until nobody votes on it in ignorance, until nobody can hide behind the statement, "Well, I didn't know; nobody brought that up before I voted."

You are the only guardians left of the liberties of the American people.

The American Constitution and the laws made under it in the past have made us the greatest nation in the world. And the same people who are constantly making their slimy and slanderous attacks upon it are the very same ones who came here fleeing from the other nations of the world, coming here because this was the finest thing God has ever permitted to develop on this earth. They got here in every respect conditions superior to anything they had anywhere else.

But they come here and they crab and they quibble and they complain; and this does not suit them, and that does not suit them; and they want it changed.

Now, American constitutional liberties are not going to be lost by going awfully slow on making changes. We have had these liberties, and they have made us the greatest Nation that ever existed. It is the

unwise change, the hasty change, under the drive of pressure groups, that threatens American liberty.

And there is now only one safeguard against it, and that is the thorough exposure of these things. When you apply gag-rule censorship, you have destroyed the last hope for the safety of the American people.

You Members of the Senate have to preserve your own liberties in order to preserve ours. And if for any reason of political expediency, to satisfy demands of noisy and threatening minority groups, you permit this liberty to be taken away, just remember this: When you permit the liberties of the American people to be taken away, your own liberties go with it. You are part of the Nation. You fare no better than it does.

When you allow minority group pressure to cause you to forge chains to bind other people's liberties, they fasten on your own wrists at the same time.

The people who would destroy the temple of American liberty by these means should remember that Samson himself perished when he pulled down a temple over him. Anybody who tries to undermine the structure of what we have can only involve himself in the common ruin of us all.

And I urge you do not permit any form of censorship.

Now, a great deal is said by those who are mostly uninformed on the subject about the terrible evils of so-called filibuster. Under the rule XXII just as it stands, the Senate has ample power to protect itself against any real abuse of the privilege of free debate on its floor. If there is a real abuse of it, party lines are not going to measure the vote. Senators rise above that when you get an instance of actual abuse of it. They can halt it any time under rule XXII.

But when you permit just those who are most vulnerable to pressure to be the ones to destroy the right of freedom of debate of the others, you do a grave disservice, not just to the Senate, but to the United States.

Senator TALMADGE. Any questions?

Senator JAVITS. Mr. Comparat, could you tell us a little bit about your organization, how big it is, where it is located?

Mr. COMPARET. The Citizens' Congressional Committee—

Senator TALMADGE. May I interrupt at this time? I have another meeting, and Senator Javits will act for the committee.

Mr. COMPARET. Yes, sir.

Senator TALMADGE. I beg to be excused, and my apologies to you, Mr. Comparat, and the remaining witnesses.

Mr. COMPARET. Thank you, sir.

The Citizens' Congressional Committee is really a—I do not know what you would say is the correct word—subdivision or subsidiary of the Christian Nationalist Crusade.

Senator JAVITS. Who is the head of that?

Mr. COMPARET. Gerald L. K. Smith. It is a nationwide organization.

Senator JAVITS. What is your function with the Citizens' Congressional Committee?

Mr. COMPARET. I am attorney for the Christian Nationalist Crusade, and the Citizens' Congressional Committee, being a subdivision of that, I am its attorney.

Senator JAVITS. Thank you very much, Mr. Comparet.

Mr. COMPARET. The Christian Nationalist Crusade is a political committee, organized as such.

Senator JAVITS. Thank you very much.

Mr. COMPARET. Yes, sir.

Senator JAVITS. We appreciate your testimony.

Is there anything you want to put in the record, Mr. Comparet?

Mr. COMPARET. I left with Mr. Langdon West a written copy of my statement that, for time limits, I have had to abbreviate.

Senator JAVITS. Very well.

Mr. COMPARET. I would like the written one included in the record.

Senator JAVITS. It shall be so included, without objection.

Mr. COMPARET. Thank you, sir.

(The prepared statement of Mr. Comparet is as follows:)

STATEMENT OF BERTRAND L. COMPARET, REPRESENTING CITIZENS' CONGRESSIONAL COMMITTEE ON PROPOSED AMENDMENTS TO SENATE STANDING RULE XXII

Mr. Chairman and Honorable Senators, I am against all of the proposed amendments to standing rule XXII. This means nothing more than my own opinion, unless I state my reasons for this opposition. I assure you that you will find that they all have a bearing on the undesirability of the amendments. The proposed change can only be understood in the light of the existing situation. This shows that the amendments would destroy the Senate's greatest value to the American people—its capacity to guard their ancient liberties.

I wonder how many people realize that the United States is now undergoing actual revolution? Not violent revolution, overthrowing a government in a day or a week, but revolution by treachery and hypocrisy, leaving the outward shell of a government emptied of all its original principles and refilled with alien purposes masked under the old forms; destroying the American traditions and freedoms which made this Nation great; and by doing this by degrees, over a period of years, escaping recognition for what it is.

To be revolution, it need not be violent. What is revolution? It is only the substitution of a new order in place of the old, but accomplished by means other than the honest and lawful amendment of the Constitution. While this can be done by violence, it is also done more easily and more effectively by subversion from within than by violence from without. It is against this that the unfettered power of every Senator is most needed.

Socialists have been unable to gain power under their own name; but they have found that all they really need is to infiltrate and take over control of old and respected political parties. We need not speculate about their intentions or their methods: We have our first actual example of the successful use of this technique in England, when the Liberal Party was taken over by them. They organized a compact, well-controlled bloc of leftwing, Socialist-Communist votes; then they offered the support of this bloc to the Liberal Party in return for its support of one of their principles. The nasty word "socialism" was carefully avoided: They called themselves the Labor Party, and carefully advanced socialistic principles, one at a time, under the names of "Economic planning" and "Welfare reforms." By their cooperation, the Liberal Party voting strength was increased, so liberals swallowed the bait—and were hooked. Thereafter they feared to lose the added voting strength of the Socialists; but at each election the price of Socialist support came higher—adoption of another Socialist principle; and they paid that price to keep the Socialist vote in line. The much larger Liberal Party was now the helpless prisoner of the minority Labor Party; the tail wagged the dog. By its success in promoting socialism under welfare disguise, the Labor Party was finally able to absorb and discard the Liberal Party. When they came into power, after World War II, they put these principles into more complete effect, with disastrous results to both the prosperity and the freedom of the British people. You know of their nationalization of several major industries—the ones which control all others—and that these nationalized industries thereafter operated at a ruinous loss, paid for by the American taxpayer. But this was not the worst.

As always when Socialist planners take power, tyranny and compulsion became the normal and invariable means of enforcing the plans. British workmen found laws prohibited them from changing jobs without Government consent; they could be ordered to work in those industries which Government felt most needed them—and imprisoned for refusal to obey. British farmers found themselves assigned production quotas of specified crops, which they must meet under penalty of condemnation of their farms, which would thereafter be operated as a state farm under Government-appointed managers. True, the Labor Party was voted out of office before very many Britons were jailed for violation of these laws; but the power was there, and was being used. Now a similar group is using the same technique on us.

In the United States, the same strategy was successful—up to the point where our Constitution interposed a barrier to complete socialization. I need not review for you how a motley collection of Socialist-Communist phony liberals took over control of the respected Democratic Party, and made that once staunch champion of States rights and individual liberty, abandon all its historic principles and spawn many schemes for Government regulation of nearly every phase of life (each one complete with reports, taxes, and hordes of bureaucratic inspectors and commissions)—all this as the price of obtaining the Socialist-Communist vote. They have become the helpless prisoner of their minorities. Now the Republican Party has been captured by the same strategy of inducing it to bid for the same leftwing vote; until this has reached the point where the most truthful and objective criticism of the Republican administration made at the 1956 Democratic National Convention was that voiced by Congressman Rayburn, who pointed out that the Republicans had promised us a bold new approach to the Nation's problems, yet had changed almost nothing of Roosevelt's New Deal system.

The result is even more dangerous here than in England, for they have here deprived the great American majority of any party to represent them: we have no opposition party to offer the public a choice of opposing principles. In 1956, either Presidential candidate could have run on the other's platform, and no one would have known the difference—for there was no difference save in the words used to make the same appeals to the same minorities. The majorities of both parties—an enormous majority between them—have no voice for the preservation of their old liberties. Under this clever control of both parties, the way is open to the Socialist revolution whichever party is nominally in power.

Part of this Socialist revolution is the class and race warfare they are so desperately fanning into flame. By propaganda on which someone is spending millions of dollars, a certain class, a certain race, is persuaded that it is oppressed and downtrodden. The wicked falsity of this propaganda would be apparent to anyone who took the time to think: there is not another nation in the world where the highest third of their population fares as well as the lowest third of ours. But who can find time to think, amid the constant din of newspaper, radio, and television propaganda pouring out the same ceaseless lie—that every American principle which has made us great, which has brought us more liberty, more prosperity, more education, more of the comforts of life than any other nation in history has even aspired to—these principles, they tell us, have produced only misery and oppression. Various admittedly minority groups are thus goaded into destroying one or another of the constitutional liberties which are the only safeguard of us all.

This is just one part of the socialist revolutionary plan. The next step is to jam through the legislative department multitudes of unwise laws to lead us, step by step, down the road to socialism—which is only the front door to communism. I need not remind Senators or Congressmen of the pressures brought upon them daily by organized minorities which seek to dictate to the great American majority. How many days—or hours—has it been since you were last threatened with political reprisals if you did not vote for some law which you knew to be unwise and dangerous? Some of these minorities (who admittedly speak not as Americans, but as separate, antagonistic groups, distinct from and hostile to the American majority) wield terrible power through their control of money and their influence over newspapers and radio by means of their power to withdraw advertising from any newspaper or radio station which does not surrender to their censorship and slanting of news. Laws demanded by them are always to advance the separate interests of their own group at the expense of all the rest of us. Many legislators are put on the spot by such demands from special-interest pressure groups whom they fear to oppose, and disastrously unwise laws will be enacted unless those members who are not vulnerable to such pressure are left free to effectively expose and fight them.

For a long time, our governmental theory of checks and balances kept us from falling under a minority tyranny, the same as that in Russia. The lust for power is always strongest in those who are least worthy to have it; and power always gravitates into the hands of the most ruthless and unscrupulous. All power corrupts; and absolute power corrupts absolutely. In theory, we have prevented the accumulation of excessive power in any one branch of government by making each a watchdog over the others. The legislative department is prevented from usurping power by (1) the Executive's veto power, and (2) the judicial department's power to adjudge a statute unconstitutional. The executive department could be (but rarely is) held in check by (1) the legislative department's control of the public purse and (2) its power of impeachment, and (3) sometimes by the judicial power to rule an Executive order unconstitutional. But no effective control as yet been exercised over the Supreme Court's flagrant usurpation of power to make new laws under the guise of judicial decision. In theory, the check on this is the legislative department's power of impeachment; in practice there are not enough legislators who have the courage or integrity to use it; so it is a dead letter—really a danger, because it lulls us with a promise of protection which does not really exist.

Until recently, the socialist revolution by subversion was held in check by our Constitution. But the Constitution does not enforce itself: We enjoy only such constitutional rights as the courts enforce. And there the revolutionists found the weak point in our national armor: Subvert the Supreme Court, and all other parts of the revolution follow almost automatically. Subversion of the Constitution is more easily accomplished, and more disastrously complete, when done by 9 men in black robes than by 90,000 men in black masks. Indeed, the Supreme Court is now too impatient to wait for subversion by legislation: It wants to lead the way to the rosy new world of socialism. Citing as their principal authority a leftwing alien who has called our Constitution a plot against the common people, they have destroyed constitutional rights of the States which their more honorable predecessors have upheld for two generations—and they do this on the specious ground that "we can't turn the clock back to 1890" to follow their own Court's previous decisions on the same point. If this is good constitutional law, then what will you say when they next decide that they "can't turn the clock back to 1791" to uphold the rights of freedom of speech, freedom of the press, freedom of religion, right to jury trial, and the rest of the Bill of Rights? You cannot afford to be complacent about this, no matter what promises or threats you have received from minority groups. The chains you help forge for another you will soon feel on your own wrists. Already, all the evil blackmail of minority group pressure has forced through the House of Representatives a law embodying that historic instrument of tyranny, government by injunction, without right to jury trial. With this will surely come its inevitable result—all the infamous practices of the ancient court of the star chamber, which enforced its evil rule in the same manner. But be assured that the Supreme Court will uphold this, because it is a phase of the socialist revolution: They will not hesitate to turn the clock back to 1493 for that purpose.

You cannot look to the President to protect us from this danger. In the first place, even if he were not under the same pressures, his constitutional power is not sufficient for that purpose. And in the second place, the American tradition has always been against rule by the strong man, the man on horseback. When we reach the point where our salvation must come from that source, we will have already lost everything. The Senate must remain the defender of our liberties.

American liberties cannot be lost by retaining the same constitutional rights we have known from our beginning, the rights which made us great, enlightened, and free. The danger is in hasty, unwise change. When the real majority of the people themselves want a change, it can be done readily and effectively by amendment of the Constitution. But the socialist revolutionaries know that the people would never vote for their schemes: That is why they never propose honest constitutional amendment, but always the backdoor entry of their revolution by hypocrisy—giving lip service to the Constitution, while destroying the heart of it by interpretation which perverts every principle of it to serve their alien philosophy.

The United States Senate is now the last remaining agency which can guard our liberties. Its historic purpose has never been the hasty rubber-stamp adoption of every unwise law by which minority pressure groups seek special advantages for themselves: It has always been the opposite—to prevent the passage of

bad laws. I believe it was George Washington who used the famous illustration of the function of the Senate: That it was like pouring your too-hot tea from the cup into the saucer, to cool it off. No law should be passed until careful study has shown it to be not only wise but actually desired by the real majority. This cannot be done under gag-rule censorship. It requires the utmost freedom of debate. And it is just when minority group blackmail pressure is the strongest that it is most essential that the courageous Members should be left free to fight it.

All of the proposed amendments to standing rule XXII are bad. Resolution 21 would allow the gag rule to be applied by just 25 votes out of the 96 Senators—and even less if some of those present failed to vote. Resolutions 17, 30, and 32 would impose gag rule by only 33 votes—and even less if some present fail to vote. Resolutions 19 and 28 require a bare majority vote to apply gag rule. But when a law is so unfair that 49 percent of the Senators are opposed to it, that is just when gag rule is most dangerous. Such a law demands the most careful scrutiny, the utmost freedom of debate. The forces and motives behind it, the advantages its supporters seek to gain by it, the effect it will have on those who oppose it, the clash of philosophies of government between the two groups—all these need to be explored fully. Its iniquities cannot be exposed in 1 hour's time by anyone.

The Senate already has the power, under rule XXII as it now stands, to protect itself against any abuse of the right of free speech on its floor. But if any of these proposed amendments are adopted, it will have lost the effective power to protect the Nation from the abuses of gag-rule censorship and the tyranny of pressure groups. The Senate is our last line of defense against the subversion of our liberties: This can be accomplished only by preventing passage of bad laws, not by looking to someone else to undo the damage you have done. If you let this defense fall, you will have proved unworthy of the trust placed in you by the American people. If you are ready to pull down the Temple of American Liberties, remember that Samson himself perished in the common downfall he created. If you destroy our liberties, how can you keep your own?

Senator JAVITS. W. L. Foster, United States Day Committee, Tulsa, Okla.

Mr. Foster, under the rules of the committee which we have had to adopt because of our problems with the length of hearings, we have, as the chairman said I think when you were here, expressed our desire to the witnesses to confine their oral statements to 10 minutes. But we are not overly strict on that.

I do notice your statement is quite long, so that we will leave it to you as to how you wish to present the matter. We will be glad to include anything you wish us to in the record as well as your oral statement.

STATEMENT OF W. L. FOSTER, UNITED STATES DAY COMMITTEE, TULSA, OKLA.

Mr. FOSTER. Mr. Chairman, I represent the United States Day Committee as national chairman. And I have no oral statement to make any further than to say that we are here in opposition to any limitation of debate in the Senate of the United States.

I have here with me our statement, which, as you say, is somewhat long. And I would like to read from that.

Senator JAVITS. Please go right ahead. Read as much as you feel you should.

Mr. FOSTER. And we want to present that for the record and also the official resolution that was passed by the central committee of the United States Day Committee.

Senator JAVITS. You proceed in your own way.

Will you tell us first what the committee is and what its membership consists of, Mr. Foster?

Mr. FOSTER. United States Day Committee was organized in Tulsa in 1953 for the purpose of promoting Americanism. The local membership, of the central committee, is composed of some 30 to 35 members. It is growing. And the membership lists are constantly being revised upward. There are many local committees over the country the registration of which we do not have. We only have some general idea as to the following by the fact that many governors have proclaimed the day, and something over 200 mayors the last year proclaimed the day under the influence of local committees.

Senator JAVITS. You may proceed, Mr. Foster.

Mr. FOSTER. All right. I will read here until you—

Senator JAVITS. Any time at all. You go right ahead.

Mr. FOSTER. We say sound and salutary reasons of public policy prompt our unyielding opposition to any proposal for modification of the rules of the United States Senate for the further limitation of debate upon proposed legislation, thereby expediting the passage of more new laws.

Any proposed new law obviously involves a departure from laws, regulations, and practices theretofore in effect. For this reason, every new law is in a large measure an experiment. The circumstance that a law is new can be no assurance that it is wise, needed, or will prove helpful.

On the contrary, it may be stated as a general thesis that the oldest and simplest laws in the world—those tried and tested by long experience—are the best. Moses, as the oracle of God, was able to summarize all the essential basic rules of human conduct in Ten Commandments. To the 10th, Jesus, the Divine lawgiver, added only one, and that but a summation of all the others.

Contrast the simplicity and comprehensiveness of this code of laws with the thousands upon thousands of pages of complex, confusing and often contradictory, senseless, and illogical product of modern legislative assemblies, not excluding, we admit with regret, the Congress of the United States.

To us it seems hardly debatable that the trend in modern times in the Nation's Congress is toward the passages of far too many, rather than too few, laws. The laws passed by the Congress too generally involve extension of Federal authority into fields either previously regulated thoroughly and at least reasonably well by laws of the States or reserved as rights and liberties to the people.

For such reasons, it is to us but reasonable and proper to place upon advocates of new legislation the very heavy burden of showing both the need for the change and convincing evidence that the proposed new way is better than the tried and established old way.

It is also submitted as a sound thesis that new legislation is too frequently sponsored by combinations of minorities of special interest group, promoted to serve private interests, to gain votes, or further personal objectives.

The more indefensible such legislation is, the more agitation there will be for speedy passage and restrictions upon analysis and debate.

Seldom in modern days does new legislation represent a general demand from a majority of the people, nor does new legislation originate with citizens who have considered the matter objectively or solely from the standpoint of the general public welfare.

Because so much new legislation is the end product of agitation by minority groups, it too often is so that any given new law itself represents compromises, group combinations among minorities, trades, and deals. It cannot therefore be presumed in favor of proposed and particularly highly controversial legislation, that it represents even the considered will of an informed majority of the people.

Considerations of this character lead us to favor rules and regulations which if anything tend further to restrict passage of new legislation rather than to encourage its enactment,

Even though the Constitution of the United States clearly vests legislative power in the Congress, in practice the legislative power has been too largely usurped by other branches of the Government. The executive branch, particularly, forgetting its primary responsibility for seeing the laws faithfully executed, assumes power to dictate to the Congress what laws shall or shall not be passed, as well as to legislate directly by Executive orders, administrative rules and regulations.

Each succeeding administration appears committed to the view that its primary function is to secure enactment of a whole new body of law, radically changing important public policies. To procure enactment of pet measures, succeeding administrations do not hesitate to bend the legislative mind to the executive will by promises of political patronage or outright diversion of public funds either to punish or reward members of the legislative arm of Government as occasion makes necessary.

Because executive pressure in favor of new legislation favored by that branch of Government is exerted in so many ways and often so unscrupulously as to amount to bribery, the right of the United States Senate, and through its debates, of the people to examine new laws without haste or further limit on discussion should not be further restricted.

The end result of executive usurpation of legislative power is both personal irresponsibility of the people's constitutionally designated legislators for legislation and neglect and incompetency of the executive in performance of its constitutional function of seeing the laws faithfully executed, which results from preoccupation with "administration" legislative programs.

The Nation is presently alarmed also because of a fear that the judicial branch of the Government, wherein appointive judges are installed at full pay for life, will usurp both the functions of making and of executing the laws. Since Federal judges are neither elected by the people nor responsible to them for continued tenure in office, such trends legitimately raise concern lest the people find themselves under control of a judicial oligarchy. Hastily considered actions of the Congress itself, even of the Senate, have helped bring about this regrettable situation.

These circumstances constitute further grounds for permitting the closest possible scrutiny in the United States Senate of new laws and proposals of every kind or character, for there is no assurance that an enactment of the lower branch of the Nation's lawmaking body represents even a free and voluntary expression of the true convictions and opinions of a majority even therein.

Only 96 Senators in the United States Senate exist to speak the collective voice of 160 million people and of all the States in the

Union. It becomes apparent that each Senator has, in effect, responsibility for expressing the opinions, on the average, of nearly 2 million citizens. Since this is so, no Senator's voice should be needlessly stifled. This right to talk freely and without further unnecessary limit should be zealously guarded.

It is doubted that if in the history of the United States the passage of any legislation has been so urgent or the public emergency so great that the Nation's larger interests would have been benefited by less careful and mature consideration of any measure in the United States Senate.

The general opinion of advocates for further limitation on debate appears to be that emergencies, real or fancied, or new or unusual conditions, justify haste and less mature consideration of so-called urgent legislation, therefore that the voice of Senators who may oppose should be forced to subside in the interest of speed.

Our own considered and careful reflection seems to support the proposition that the greater the seeming emergency for some new legislation, the greater the need is for careful consideration and debate in regard to it.

In our view, more debate surely is to be preferred to more bad laws. The need is for more vigorous opposition, more thorough debate, more centering of public attention upon the vices of most new legislative proposals, rather than less.

If the Congress of the United States should for a space of 10 years busy itself primarily with the repeal of too hastily considered laws already enacted, rather than to continue the present trend toward hasty passage of an ever-increasing volume of new and dubious legislation, this would, in our opinion, result in great good in a period when all governments of and by the people are under attack by forces both at home and from afar bent on their destruction.

Under present conditions, even the nine Justices of the Supreme Court of the United States are in constant disagreement concerning the law; inferior Federal and State courts and lawyers are in hopeless confusion because none can know what the law is.

The tendency of the courts to make law for themselves, then to worship their own errors, rather than to read and apply the law as it is written, undoubtedly stems to some degree from the circumstance that the body of the statutory law is so vast and complex that there is possibly no citizen in the United States who has attempted to read all the law, and certainly none who can rightly claim to have studied it with sufficient care to comprehend it all. Had more careful consideration and less speed been exercised, had more time been devoted to considering whether so much law was really needed by the United States Senate in former days, this situation might have been prevented.

Federal criminal law is such that no citizen can be sure he has not violated some of its penal provisions. In fact, most, at some time or another possibly have, for citizens can be convicted and severely punished even for failure to answer rightly or to state correctly answers to questions in myriads of Government forms, the nature and purpose of which, many, if not most, do not understand, and the correct answers to many questions in which are not easy to determine. Citizens may be jailed under Federal law for such loosely defined

offenses that guilt or innocence often depends upon the favor, or lack of it, of the judge on the bench.

Illustrating more specifically unwise and hurriedly considered legislation which, in our opinion, has found its way into Federal law, we invite attention to laws such as the following—

Senator JAVITS. Now, Mr. Foster, at this point would it be convenient to you to put in the record the specific examples you give which appear upon the ensuing pages of your statement and ask you to read your conclusion or make such conclusion as you wish, which I note here is at the last page of your statement?

Mr. FOSTER. Yes.

Senator JAVITS. You have taken about 20 minutes, which is all right. We have no complaints about that. Except this seemed a convenient stopping point.

(The balance of Mr. Foster's prepared statement follows:)

1. Adopting charter of the so-called United Nations

The treaty adopting the charter of the so-called United Nations was rushed through in a veritable frenzy of demand for speed and without adequate consideration by the United States Senate. This treaty established a permanent and irrevocable alliance between the United States and the Communist regime of Russia, headed by "Uncle Joe" Stalin.

Ostensibly calculated to preserve the peace of the world, the United Nations has ushered in an era of perpetual war, worldwide, both cold and hot, and no end of it in sight.

Such semblance of peace as exists rests on mutual, mortal fear and is maintained by the ever-increasing and impossible burden of a race to create more and better atomic bombs and to preserve a peace based on terror. There is presently neither promise nor pretense of any peace based on mutual respect, confidence, or regard for justice and right.

The lone voice of one courageous United States Senator at the time the United Nations Charter was being considered might have saved the United States and the world from its present tragic dilemma. More debate might have aroused others like the late United States Senator McCarran who confessed sadly regret for his approval of the U. N. Charter to his dying day.

2. Drafting citizens as soldiers to serve as armies for foreign nations.

As a result of the lack of courageous Senators who would contend against such laws to the death, citizens of the United States may now be drafted to create the armies that are to sustain or destroy any government in any quarter of the earth in furtherance of the ever-changing vagaries of the executive branch of Government as determined by the State Department, and without so much as the knowledge of the United States Senate.

Paradoxically, pressure from the State Department upon the Congress and a claimed emergency furthered this radical change in national policy at the very time the world was supposed to be enjoying that celebrated peace brought about and maintained under the aegis of the United Nations.

American citizens not yet old enough to vote are systematically ordered from their homes to report for military service, where they may be compelled to serve under the flag of the United Nations and to execute its mandates, regardless of the circumstances that no citizen of the United States owes or has pledged allegiance to United Nations and despite the circumstances that the only enemy in the world presently posing a threat to the peace and security of the United States and of the world occupies in the United Nations a dominating position.

That such an indefensibly stupid arrangement lost for us the last war appears to disturb our State Department not at all, for to the State Department peace and war are but interchangeable terms for the same status of world turmoil and disorder.

More deliberation by the United States Senate might have prevented this deplorable and to us indefensible invasion of the civil rights of American youth, which threatens both our identity and our existence as a free nation.

3. Status of Forces, Treaties and Executive agreements to deliver American citizens in arms to the jurisdiction of foreign nations for trial and punishment under alien laws

Abdication by the United States Senate of its constitutional duty and obligation to consider maturely and carefully treaties, Executive agreements, and laws has brought about a situation where American citizens in arms in foreign countries are but pawns in the chess game of world power politics. The executive department usurps the right and authority to deprive citizens in arms of every civil right under both the Constitution and laws of the United States.

The while this situation exists, the United States Senate fritters away its time considering so-called civil-rights legislation under the lash of the executive department of government and of powerful organized minority groups of citizens with votes needed by the politicians, but which citizens are presently safe at home and with civil rights amply guarded by domestic laws, the Constitution, and the courts.

How desperately the people of the United States need Senators even to filibuster against laws which may strip them of every shred and vestige of personal cause for concern with the future welfare of the United States as a nation; for if a citizen be orphaned and disowned by his own Government at a time when peculiarly he needs the protection of its constitution and its laws, of what value is American citizenship to him?

Readiness of the United States State Department to deliver American soldiers like William Girard, who may be in military service abroad, over to foreign governments for trial and punishment conformable to their laws, contrasts strangely with the immunities from prosecution for crime under American law it extends to Communists from the Kremlin who may be on diplomatic missions or assigned to service with the United Nations in the United States. The laws committing our armies to military service abroad should have assured them that the flag of the United States symbolized something for them, even in Japan.

4. Taxing the American people to support foreign governments

If the Communists had coldly conceived and executed a plan to ultimately bankrupt and through this means destroy the United States, it is doubtful if one more ingenious could have been conceived than the plan which obligates the taxpayers of the United States to provide indefinitely the economic sinews to sustain all the weak and faltering governments of the world.

This radical change in national policy in effect drafts every sovereign citizen of the United States in every business and occupation, where he is subject to taxes, in the service of every foreign nation to which so-called Marshall plan aid is extended, for taxes are but part and portion of the wages of the American people for their labors.

The Marshall plan, as initially proposed, contemplated economic aid from the taxpayers of the United States, even to the major enemy of our Nation.

In practice there can be no assurance that presently the Iron Curtain countries are not substantial beneficiaries of foreign-aid spending, for information and means of obtaining information concerning the final and ultimate disposition of American dollars sent abroad is believed not even available to the average United States Senator. Certainly such information is not generally available to the American citizens who provide the money.

To us there is no great difference between the indefensible scheme whereby plates from the United States Treasury were made available to a foreign power for printing United States dollars abroad for the use of some foreign government and in having our money printed in Washington for the same purpose.

Marshall plan spending abroad appears to rest on the false premise that we can buy friendship with money, that we can hire foreigners to give their lives for our country.

The lash of the executive branch of Government and agitation by special-interest groups, the identity of which to the general public remains obscure, brought about this radical change in American public policy. A filibuster by a courageous representative of the once sovereign American citizens in the United States Senate might have prevented adoption of a national policy the result of which can only lead to national bankruptcy and which in any event makes us slaves to foreigners.

5. Censuring Senator Joseph McCarthy

An outstanding example of great public need for some courageous Senator to stand guard to the bitter end with the Nation's defenders was that day recently

when the United States Senate was under the whip of a strange combination of political powers, actually considering the censure of the late United States Senator Joseph McCarthy. No man of our age is more worthy of praise for brilliant, courageous, unyielding, and patriotic performance of duty in an effort to expose the most dangerous and effective enemies of the United States who have been operating in secret, and even in the United States Army.

Courageous and unflinching support at that time, rather than condemnation, for United States Senator McCarthy might have resulted in a desperately needed change in overall public policy, in a willingness and zeal to ferret out and expose all traitors, all spies, and all disloyal citizens in every department of American public life, and in a determined purpose to win the existing world war against communism in the Nation's Capitol, and in our own Armed Forces. The Senate should at the least have discovered who promoted Peress.

Nothing could more graphically vindicate McCarthy's position than the recent disclosure that the United States Government is vainly attempting now to obtain release to its jurisdiction from France of intelligence officer George Zlatovski and his wife, Jane, so that these citizens who have been indicted for treason may be tried in American courts and under American law for offenses committed in America against the peace and security of the United States. The alleged treasonable acts are reported to have continued for some 18 years and during a time when Zlatovski was an officer in the United States Army.

6. Some further illustrations of legislation which needed more consideration in the United States Senate

We conclude by directing attention to four purely domestic laws which also illustrate, in our opinion, well the great need for more rather than less mature consideration by the United States Senate of Federal laws that involve dubious principles of basic public policy.

A. Federal regulation of suffrage at elections conducted under Federal law.—Minority groups and professional reformers throughout the United States continue agitation for civil-rights legislation to extend the power of the Federal Government to regulate elections and the suffrage. Strangely no criticism seems to have been directed toward certain laws which have been enacted under the pretext of an emergency whereby the Federal Government has attempted to prescribe terms and conditions under which the suffrage may be exercised at elections specifically provided for by Federal law.

We direct attention to provisions of the Agricultural Adjustment Act of 1938, as amended, whereby the production of basic commodities on American farms may be prevented and violations punished as a public offense. Adoption or rejection of such farm programs are made to depend upon the result of elections conducted under Federal law. At such elections the right of suffrage is withheld generally from all citizens of the United States except those who presumably will benefit from the adoption of acreage allotments. Not even, all farmers are eligible to vote at such elections—only, such as have allotments of corn, or wheat, or cotton, etc.

Agitators for civil-rights legislation, who habitually criticize the sovereign States for imposing requirements in some instances that voters be limited to persons who, at least through poll taxes, help pay the burdens of Government, do not even discuss Federal laws disenfranchising in effect every citizen of the United States except those relatively few farmers who have basic crop allotments.

The issue to be determined at such elections is one of general public concern for it involves among other things the food supply of the Nation. More mature consideration against such invasion of the civil rights of American citizens disenfranchised by such laws would have been eminently in the public interest.

B. Old-age and retirement pensions for favored citizens range from \$22,500 to \$35,500 per year.—Overall public interest in recent decisions of the Federal courts, particularly of the Supreme Court of the United States, prompts us to invite attention to the circumstance that to encourage retirement of Federal judges, and to create vacancies so that the present judges might be installed in their high offices, the Congress of the United States under Executive pressure and assuredly without judicial remonstrance in recent years has passed legislation not only substantially increasing salaries of Federal judges but providing, in effect, retirement benefits and old-age pensions for Federal judges in sums varying from \$22,500 to \$35,500 per year.

The wisdom of a public law whereby any public officers is to be retained upon the public payroll for life at full pay, work or play, regardless of the character

of his service, needed certainly more consideration by the United States Senate.

O. Exorbitant Federal taxes and an ever-mounting public debt.—The lavishness with which the Congress, often under Executive pressure, and generally with undue haste, appropriates the people's money, reminds us to direct attention to the present exorbitant and confiscatory Federal tax rates, and the ever-mounting public debt.

Hasty lawmaking has brought about a condition where the United States Government possibly owes more money than all the nations receiving Marshall plan aid combined. Despite this, the American people possibly pay more in taxes than under any government on earth. Under present trends there appears no likelihood of relief despite income-tax rates which mount to 91 percent in the top brackets. More deliberation in lawmaking might have prevented this lamentable condition which weakens and shames us before the world.

D. Federal laws for committing deviationists to the mad house.—A final illustration of unwise legislation which, in our opinion, might have been avoided by more mature consideration in the United States Senate is found in sections 4244-4247, title 18, United States Code, relating to alleged mental incapacity of citizens after arrest and before trial.

Under provisions of this section of the penal code of the United States, as construed and applied by the courts, a brilliant citizen who writes well but does not write the things some Federal Judge thinks she should write, may be mauled around, humiliated, forcibly committed to an insane asylum, then tried and convicted of the offense of giving bad advice, advice which, by the way, no one appears to have needed. Even the circumstance that no one was shown to have followed the alleged bad advice the Federal Judges considered immaterial upon the issue of whether a Federal crime had been committed. This legislation establishes a perfect pattern and procedure for purging political adversaries in the United States for deviationism within the framework of existing law.

Mr. FOSTER. We say, concluding, may we for the reasons stated and illustrated above earnestly urge that the United States Senate reject any proposal designed to expedite the passage of more new laws or to further limit the Senators in their analysis and debates upon the merits of any proposed action by the United States Senate.

That is respectfully submitted by the United States Day Committee, W. L. Foster, chairman; W. E. Garrison, executive secretary; and Glenn O. Young, attorney and counselor.

This is our signed copy, gentlemen.

Senator JAVITS. We will be glad to have it.

Mr. FOSTER. I will leave that with you and ask that it be put into the record.

Senator JAVITS. Would you read the resolution?

Mr. FOSTER. The following resolution was passed by unanimous vote by the United States Day Committee in regular session with a quorum present on May 31, 1957:

Whereas we have witnessed, during the last two decades, the undermining of our constitutionally guaranteed freedoms, the loss of our individual liberties, and general regimentation; and

Whereas we are mindful of the fact that the right of unlimited debate in the United States Senate is one of those freedoms that must be preserved, at all costs, if we are to preserve the American way of life which has placed this Nation in a position of world leadership; and

Whereas the alternative to unlimited debate is "gag rule" or at the least a form of censorship: Now, therefore, be it

Resolved, That the United States Day Committee, in regular session assembled on this the 31st day of May, in the year 1957, do hereby urge that the United States Senate place no limitation whatever on debate pertaining to any measures affecting the lives and fortunes of the American people, except as is now provided in Senate rule XXII.

Senator JAVITS. Thank you very much, Mr. Foster.

Mr. FOSTER. Yes, sir.

Senator JAVITS. We appreciate your appearance.

Mr. FOSTER. May I also state, Mr. Chairman, that I am the vice president for the southwest division of We, The People, and asked by the president, the headquarters of We, The People being in Chicago, that this statement represents their sentiments.

Senator JAVITS. This statement you have just made?

Mr. FOSTER. Yes, sir.

Senator JAVITS. All right. Thank you very much, Mr. Foster. We appreciate your appearance.

Mr. FOSTER. Yes, sir. Thank you.

Senator JAVITS. Our next witness is Mr. Andrew Wilson Green.

Mr. Green, would you come forward, please?

Will you proceed? Mr. Green, we generally like, if you would be good enough, to have you make some preliminary statement as to your organization, what it is, the number of its members. You may have it in your prepared statement. You do it in your own way.

STATEMENT OF ANDREW WILSON GREEN, STATE CHAIRMAN, PENNSYLVANIA BRANCH, FOR AMERICA

Mr. GREEN. I believe I have it in my prepared statement but I believe I will elaborate a little bit.

Senator JAVITS. All right.

Mr. GREEN. My name is Andrew Wilson Green, and I am from Harrisburg, Pa. I am State chairman of Pennsylvania for America. And while I have not received express directions from our executive board to appear here this morning, I think I can state from my personal acquaintance with them that the views which I am about to state would represent the views of the overwhelming majority of our members. I should like to tell you a little bit about our organization. It is the Pennsylvania branch of For America which supported T. Coleman Andrews for President and Thomas H. Werdel for Vice President in the 1956 elections. I assume you have heard of our organization.

In Pennsylvania, we are becoming extensively organized, using the model of the two major political parties as the pattern of our organization. We have a State committee of 65 members, representing some 25 counties, and we feel we can call upon approximately 1,500 workers to give us support in any program of action which our organization desires to support.

I think I might say a little bit about the national organization. It has a national advisory board of about, oh, 100 members, and is active in about, I would say, two-thirds of the States, and is in touch with approximately 35,000 to 40,000 people in the United States.

I might also say that I am on the national advisory committee of For America.

I think the committee might be interested in knowing that it was our organization which placed the name of Senator William F. Knowland in the Republican presidential preferential ballot in Pennsylvania in 1956, and Senator Knowland received approximately 95,000 votes as opposed to President Eisenhower. However, I must say that after a reading of Senator Knowland's position on rule 22, it is possible that the confidence of our organization was misplaced.

Also, our organization takes substantial credit for the defeat of Senator James H. Duff in Pennsylvania in 1956, who trailed Eisenhower by over 600,000 votes and lost by approximately 14,000 votes.

I opposed his candidacy on a write-in basis, and I am willing to make an affidavit before this committee that a write-in voter in a northern State is more effectively disenfranchised than a colored voter in any State in the Union.

Now let's get on to rule 22. Let us look at the facts. In the Senate hearings on this subject in 1949, the tables indicate at that time that only 37 pieces of legislation have been defeated by a filibuster in the period from 1865 to 1948. In other words, in a period of 80 years, only one-half of 1 bill per session of the Senate is defeated by a filibuster. (Limitation on Debate in the Senate, hearings before the Committee on Rules and Administration, U. S. Senate, 81st Cong., 1st sess., p. 20.)

Furthermore, since the existence of the cloture rule in 1917 through 1948, it appears that cloture has been moved only 17 times, and successfully only 4 of these 17 times. Of the 13 times which cloture failed, it would appear that it had failed because of a lack of a majority in 7 of these 13 times. In other words, even if the cloture rule were liberalized as suggested, it would have brought to vote only 6 additional bills in a period of approximately 30 years.

The conclusion I come to from these facts is that the whole controversy on rule 22 is making a mountain over a molehill. The present rule is a good rule, and even if the Senate had no rule to invoke cloture, it would appear that there would be no substantial interference with the deliberative processes of the Senate.

This leads also to a further conclusion that the proponents of liberalization of Senate rule 22 are not moved primarily by any desire to improve the procedure of the Senate but primarily by political considerations. And I suspect that this political consideration is the desire to pass so-called civil-rights legislation. This conclusion is further confirmed by noting the list of the witnesses before the Senate committee in 1951. Outside of the testimony of members of the Senate, I note that no testimony was received from any person having the reputation of a political conservative, that 12 persons might be identified as expressing a labor-liberal point of view, and that the testimony of 5 persons representing the Jewish organizations was heard. I am sure that you can confirm this statement by checking the list of witnesses on page III of the table of contents of these 1951 hearings.

Since I do not wish to engage in religious controversy in any testimony which I give before this committee, I shall not comment on the testimony of the individuals representing Jewish organizations. I shall only say that testimony by representatives of religious bodies or bodies purporting to represent individuals of a particular religious faith is often unfortunate in the implication that there are no members of that particular religious faith that hold a contrary view.

Now, if I may, I think for the record I would like to state something of my own religious background. I was brought up as a Methodist and am presently a member of the Unitarian Church of Harrisburg.

I, when I belonged to the Methodist Church, opposed the political activity of such Methodist leaders as Dr. Harry Ward, Bishop Oxnam, and Bishop McConnell. And I might say, in my own opinion, judging from the actions of Bishop Oxnam and Dr. Ward, that they are under the discipline of the Communist Party of the United States.

And I might say also that one of the reasons I am not an active

Unitarian today is because I had attempted to get the Unitarian leaders such as the president of the American Unitarian Association, Rev. Dr. Frederick Eliot, and others to cease their pronouncements upon political questions, which I do not feel is the task of a spiritual organization. This effort has failed, and I have not been active in the Unitarian Church consequently for about a year or two.

But, anyway, let me resume now with my statement.

Let us return to the political implications to the proposal to change Senate rule 22. The Pennsylvania State Committee of For America, being in a Northern State, does not feel directly concerned with the merits of the issue of segregation. But we are concerned about efforts to deal with the problems of race relations when they involve changes to our political customs and institutions.

We hear a lot of talk these days about democracy, and many people think that it settles the merits of an issue to say that the majority of the American people have such and such an opinion about it, and that therefore the only political problem concerned is to remove any restraint over our political customs and institutions toward the implementation of the majority opinion, through law or other coercive political measures. Such an attitude is naive, childish, unsophisticated, and irresponsible.

It is worth noting that the Founding Fathers of our country, in writing the Constitution, did not establish a plebiscitary democracy but a representative form of government. The members of the Senate are supposed to interpose their informed judgment and responsible opinion between the uninformed and irresponsible opinions of the majority in the enactment of law.

Furthermore, the American Constitution establishes a system of government dependent upon checks and balances, so that where the controversy is especially provocative and the feeling of concern of minority individuals is intense, their desires cannot be hastily overridden by a simple public majority. We must recognize that Government is based upon consent, not merely of the majority of the people, but of all the people, and that if we are going to override the intense feelings of a minority of our people on certain issues, we will destroy the necessary basis of consent of civilized government, create a spirit of rebellion and disobedience to law, and encourage social disorder. There are some doctrinaire and fanatic democratic theorists who feel that the democratic theory must be vindicated, though the heavens fall. Surely, should such fanaticism become a prevailing temperament of our times, and this great Republic should eventually be destroyed through such irresponsibility, they will have time to repent and change their opinion, but I trust that the members of this committee do not prefer to learn such a vital lesson by experience.

So we arrive therefore at this conclusion:

Has the Senate cloture rule as presently written worked harm upon the welfare of the Nation? We think not. We think that in the instances in which the filibuster has been used, or in which cloture has failed, there have been strong and intense feelings involved in which it would have been harmful to the tranquility and well-being of our Nation to have overridden, even though it should have been a minority who defeated cloture or used a filibuster. In other words, we think experience shows that the filibuster has not been used irresponsibly.

In fact, as I recall, the filibuster has even been used by some of the

individual Senators who are presently on some of these resolutions which would liberalize Senate rule XXII, and in particular I recall a certain gentleman from the State of Oregon, whose name at the moment escapes me.

I should, therefore, urge the Senate to retain rule XXII in its present form. We should not abuse our institutions merely out of a strong desire to punish the conduct of a minority with whom we may disagree. It is necessary to maintain our political institutions in such form that they can command the basic assent of not merely a majority of the American people, but of all the American people, and we cannot afford, for political purposes, to stir up contention between different groups in our country, even if we do so sanctimoniously, under the banner of democracy and civil rights.

We have had one Civil War. Is that not enough? Must we create the danger of similar hostility among the American people?

Senator JAVRS. Thank you, Mr. Green, for your testimony.

Now, the understanding which the subcommittee had was that the hearings would be closed as of today, subject to any further testimony that the subcommittee might agree to hear and subject to the testimony of any Members of the Senate who might wish to testify.

In the absence of the chairman, my colleague, the Senator from Georgia, however, I would just make the announcement that the subcommittee will stand in recess subject to the further call of the Chair.

The Chair will announce that those Senators who wish to submit written statements may do so for the record without appearing, or they may request the subcommittee to hear their testimony orally.

The understanding is that until such time as the record is actually printed or to be sent to the printer the subcommittee will do so.

The subcommittee will stand in recess.

(Whereupon, at 10:25 a. m., the subcommittee recessed, subject to the call of the chairman.)

(The statements of Senator Lyndon B. Johnson, Senator William E. Jenner, and Senator Thomas C. Hennings, Jr., subsequently received for the record, are as follows:)

STATEMENT OF HON. LYNDON B. JOHNSON, UNITED STATES SENATOR FROM THE STATE OF TEXAS

As one of the sponsors of Senate Resolution 30, I appreciate this opportunity to place my views on the record.

We are dealing with a difficult question. It involves the rules of procedure of the Senate—and, in fairness to all, the rules should not be changed lightly and without due regard for all consequences.

I do not intend to burden the record with a lengthy review of the history behind this controversy. This committee has available to it expert testimony which will exhaust every historical and legal phase of the issue.

Basically, we are trying to find procedures which will make for greater efficiency in the operations of the Senate. At the same time, we want to be certain that the word "efficiency" does not become a euphemism for abrogating minority rights.

On this issue, it is very easy to take extreme positions.

It is obvious that both the majority and the minority have certain rights and that sometimes these rights appear to conflict. When such conflicts arise, practical solutions must be found.

The majority has a right to act after due deliberation. But this is not an unchecked right and our Constitution specifically sets forth certain acts which require more than a majority vote.

The minority has the right to free debate—and this is probably the greatest protection of them all. But this right does not carry through to the extent of permitting a minority to paralyze the processes of government.

I do not pretend to know the exact point at which minority and majority rights begin and end. I doubt whether anyone can state that point with certainty.

The best we can do is to invoke the rule of reason and try to arrive at a ground which best appeals to prudent men.

We know that a minority can frustrate the majority beyond the point of tolerance. When that happens, there can be a violent reaction which in the long run will be regretted by both the majority and the minority.

We know that majorities are temporary. This means that any majority which deprives a minority of rights today will almost certainly find itself deprived of the same rights tomorrow.

Therefore we cannot tailor the Senate rules to fit a temporary situation. Whatever we pass must be something that we can live with today, tomorrow, and through all the days to come.

I do not pretend that Senate Resolution 30 is a perfect solution to all the difficulties. I do not believe we can find perfection.

But Senate Resolution 30 meets one test which I have applied to every resolution that has been introduced. It is that I would consider it a fair and equitable procedure to follow whether I was in the majority or the minority on any piece of legislation.

I hope that throughout the debate on the Senate rules, my colleagues will engage in a philosophical exercise.

First, I hope they will imagine themselves in a majority desperately longing for the passage of a bill in a situation where they are frustrated by a minority.

Second, I hope they will imagine themselves in a minority and desperately longing for the defeat of a bill in a situation where they are outweighed by a majority.

The rule of procedure which they are willing to follow in both situations is the one which should be supported. I hope none of us is willing to allow one situation to outweigh the other.

Senate Resolution 30 is a proposal which to my mind meets the requirements. I am willing to accept with good grace a decision of the Senate under such a procedure regardless of how I feel about any specific piece of legislation.

First, it permits cloture to be invoked by two-thirds of the Senators present and voting rather than by a constitutional two-thirds.

Second, it brings cloture into effect on an issue involving the rules of the Senate—an extremely important change. It seems to me that if the Senate can cut off debate on substantive legislation, it should be able to cut off debate on the rules as well.

Third, it would recognize the permanency of the rules. I believe this is a vital principle because if we are to change the rules with every temporary shift in the majority, we would lose something basic to our liberties.

This proposal is frankly a compromise between opposing points of view.

On the one hand, we have those who believe in cloture by a majority vote. I respect the motives of those who hold to this concept but I cannot agree that there is any evidence that such a drastic step is necessary.

On the other hand, we have those who believe in the right of unlimited debate. Again, I respect their motives but I cannot agree that a small minority has the right to frustrate indefinitely the right of the majority to act.

This is reasonable ground; this is prudent ground. And if the experience of the future demonstrates that it does not go far enough, we can take whatever steps are necessary.

STATEMENT OF HON. WILLIAM E. JENNER, UNITED STATES SENATOR FROM THE STATE OF INDIANA

I have participated in floor debates, sponsored cloture resolutions, and deliberated in committee meetings on this subject for many years.

As early as March 17, 1949, I participated in debate on the Senate floor in consideration of Senate Resolution 15. This is popularly known as the Hayden-Wherry resolution, and I favored it.

Briefly, the Hayden-Wherry resolution provided that 16 Senators could move that a vote be taken on the question of closing debate. The Presiding Officer of the Senate would put the question to the Senate, without debate, and if two-thirds

of the Senators duly chosen and sworn voted in the affirmative, then debate could be closed off. Thereafter, however, each Senator would be given 1 hour to speak on the pending business. The Wherry amendment would not apply to subsection 3 of rule XXII.

This is, in effect, the rule the Senate adopted in 1949.

I appeared as a witness before the Rules Committee in 1951 in support of Senate Resolution 203, introduced by the late Senator Wherry. This resolution proposed a change in the number of votes necessary to invoke cloture from two-thirds of those Senators duly chosen and sworn to two-thirds of those Senators voting. This resolution attempted to return to the original proposal of the 1949 Hayden-Wherry resolution. Senate Resolution 203 failed to garner the support it deserved and consequently the rule was left unchanged.

In 1953, after I became chairman of the Rules Committee, I introduced Senate Resolution 20 and it was reported to the Senate. I ask that a copy of this resolution be made a part of the record and printed at this point in my statement.

[S. Res. 20, 83d Cong., 1st sess., Rept. No. 268]

[Insert the part printed in *italic*]

RESOLUTION

"Resolved, That subsection 2 of rule XXII of the Standing Rules of the Senate (relating to cloture) is amended by inserting before the word 'following' in the eighth line of such subsection the word 'fifth', and by striking out 'by two-thirds of the Senators duly chosen and sworn' and inserting in lieu thereof 'by two-thirds of the Senators present and voting'."

This resolution proposed two major changes in rule XXII. First, it lengthened the time limit now existing between the filing of a cloture motion and the subsequent vote thereon from 1 to 5 more intervening days. Second, it provided that cloture could be invoked by two-thirds of those Senators present and voting instead of two-thirds of the Senate duly chosen and sworn.

Finally, I am cosponsor of Senate Resolution 30 which is now before you for consideration. It provides, among other things, that cloture can be invoked by two-thirds of those Senator present and voting instead of two-thirds of those Senators duly chosen and sworn.

I believe, Mr. Chairman, my record is both clear and consistent in favoring the aforementioned change in rule XXII. At the same time my record is also clear and consistent in opposing all proposals favoring a majority-vote cloture rule. Both a majority cloture rule and completely unlimited debate (no cloture rule whatever) are extremist positions which the Senate must avoid at all times.

I wish to set forth at this point citations of my activities and position on cloture. See hearings before the Rules Committee entitled "Limitation on Debate in the Senate, 1951," pages 184-194; Senate Report No. 1256, 82d Congress, 2d session, entitled "Amending the Cloture Rule With Respect to the Number Required for Adoption of a Cloture Motion"; and Senate Report No. 268, 83d Congress, 1st session, entitled "Limitation of Debate."

On January 4, 1957, I made a statement on the Senate floor which states comprehensively my position and reasons therefor. I ask permission to insert that statement in the record at this point.

[From the Congressional Record, January 4, 1957, pp. 112-113]

"Mr. JENNER. Mr. President, I rise today to advocate freedom of speech. That may sound strange to newcomers in this body; but adoption of the proposals advanced by those who desire a majority-rule cloture procedure would, in fact, put an end to freedom of speech in the Senate.

"Today I am in a unique position, because I favor civil-rights legislation, but I wish to have rule 22 amended in accordance with the amendment I submitted on January 7, 1953. That amendment would change the present rule 22 so as to require the affirmative votes of two-thirds of the Senators present and voting, and also to provide for 5 days' notice on the filing of a cloture petition. In other words, I think that rule 22 as it now exists should be modified; but, on the other hand, I do not think the modification should go to the extent of destroying freedom of speech in the Senate by letting a majority gag a minority.

"Mr. President, I wish to give a little of the history regarding the previous question.

"In 1816, the House of Representatives debated the issue of free debate. They adopted a strict cloture by a perversion of the meaning of the previous question.

"Mr. Gaston, in speaking in favor of free debate, pointed out that the original purpose of the previous question was to postpone one subject in order to take up another. In other words, it was simply a demand that the House should first pronounce whether it was then expedient to decide the question under debate or to turn temporarily to other business.

"The Continental Congress followed this procedure, and used the previous question properly.

"However, through the years following the Continental Congress the meaning of the previous question changed.

"This was the reason for the debate in 1816. Mr. Gaston pointed out at that time that the House, in attempting to change the historic and true meaning of the previous question, was abandoning true principles. It is interesting to note to which group of Members he referred. I quote:

"This, sir, was in 1793, in the days which have been falsely called the days of terror: but which I feel a pride in showing were the days of correct principles. We had not then discovered how to construe away the rights of the people or their Representatives. This illustrious discovery was reserved for the genius of modern republicanism."

"This view was further substantiated by the elder Senator Henry Cabot Lodge, who in 1893 said:

"There never has been in the Senate any rule which enabled the majority to close debate or compel a vote. The previous question, which existed in the earliest years, and was abandoned in 1806, was the previous question of England, and not that with which everyone is familiar today in our House of Representatives. It was not in practice a form of cloture, and it is therefore correct to say that the power of closing debate in the modern sense has never existed in the Senate."

"It would be a sad day for America if the rights of the free debate in the Senate were abolished. Surely, the Founding Fathers, many of whom were active in Congress, never intended that the Senate should prohibit unlimited debate.

"Through the years the Senate has debated the pros and cons of unlimited debate. It is curious to note that for over 125 years, or from 1789 to 1917, the Senate had no cloture rules at all. During that time the parade of great men to the Senate continued, and most of them were firm advocates of free debate. Since 1917 we have had a two-thirds requirement in one form or another.

"Today I should like to see the rule amended so as to require the favorable votes of two-thirds of the Senators present and voting, instead of the favorable votes of two-thirds of a constitutional quorum.

"I do not believe that our civil-rights legislation should be tied to the right of free debate. The principle of free debate is, in itself, one of the most important foundations of American liberty. Our civil-rights legislation should be introduced and passed. I think that ultimately it will be, and I believe it will be at this session.

"As a supporter of civil-rights measures which have floundered and died in the Senate, I know full well that there have been abuses of the right of free debate. But, Mr. President, the end never justified the means. Therefore, the right of free debate should not be destroyed merely to bring about the passage of certain proposed legislation.

"The Senate should be on guard against a strategy 1,000 years old. I refer to those who raise a great and perhaps valid moral issue, on the one hand, and then relate it to the desired goal, on the other hand. Then the campaign is waged almost solely on the moral issue. The real goal is thus obscured. In the instant case the desired end and the real reason why some raise the civil-rights issue is to impose a majority rule on the Senate, not only for civil-rights legislation, but for all legislation to come.

"I say that even if civil-rights legislation is enacted today, those opponents of free debate will continue to attack it until it is destroyed. To many people, civil rights is a convenient tool to be used to achieve a desired end.

"The current rules of the Senate provide adequate remedies. Besides the well-known rule 22, Senators may:

"Require speakers to stand and not sit or walk around.

"Take away the floor for using unparliamentary language.

"Rise to a point of order against quorum calls where no business has intervened since a rollcall disclosed the presence of a quorum.

"Object to reading a paper, under rule 11.

"Enforce rule 10.

"Run the Senate 24 hours a day.

"It is a well-known rule in every court that petitioners must exhaust all available remedies before filing an appeal. I believe the same principle applies here.

"I like to think of Congress as trustees to preserve what the creators of the trust founded. The terms of this trust are to be found in the Constitution of the United States. The beneficiaries are the young people and unborn children of the future. Our duties as trustees are set forth in the Constitution.

"Under its terms, the Senate was created to insure equality among the several States. The proposition which many of the original States demanded, and got; namely, equality of representation in the form of a United States Senate, is not even debatable. A Senator does not represent population or area, but, rather, a State.

"Any limitation on debate impairs the equal representation of the States in the Senate. However, if we keep the present rules, each State will be adequately represented. But it is my firm belief that if the majority rule advocates prevail, the State would, in effect, be denied equal suffrage.

"Article V of the Constitution provides that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." What right have we to determine to do precisely what the Constitution forbids? Where is Indiana's equal suffrage if a majority in the Senate decides that it has neither the time nor inclination to hear either of her Senators? This right to speak and be heard is the one means we have to protect and perpetuate this equality.

"I now turn to another part of the Constitution. No citizen shall be deprived of life, liberty, or property, without due process of law. Furthermore, every citizen in the country is recognized as possessing the right, either by himself or peaceably assembled with others, to petition the Government for a redress of grievances.

"Citizens make known these grievances and desires through their trustees, or Senators. Because of our right to speak on this floor, these petitions are publicized, and many times laws are passed redressing their grievances. I believe that to refuse to receive petitions and redress grievances is an act of tyranny prohibited by the Constitution. Free debate on the Senate floor insures every citizen the right of petition and rightful redress. I assert, Mr. President, that the American people have a constitutional right to be heard before their money is voted or their liberty restrained, and we are their legal trustees. I believe that the entire Congress cannot, by law, deprive them of their constitutional franchise, the right to petition for redress of grievances. The Senate is not competent to close the mouth through which the petitioners speak.

"Mr. President, our Founding Fathers believed that free debate was so important that they granted immunity to Senators and Representatives from libel actions. The privilege of a Senator to declare the will, to explain the views, to make known the grievances, and to advance the interests of his constituents and State, is no less precious now. This right would be narrowed unreasonably and I believe destroyed, if a majority rule were adopted.

"The concept of majority rule is noble. The concept of free debate is no less noble.

"The advocates of majority rule allege that free debate has many evils, primarily, that it slows legislation.

"Mr. President, majority rule, instead of being sanctioned by the constitutional authority which the Senate possesses of making rules to govern its proceedings, is at variance with the very object for the attainment of which this power was delegated.

"The only purpose of rules in any deliberative body is to protect the minority against the potential tyranny of the majority. That was why the Senate was delegated this great and valuable power. To me the intent is clear. A second reason is that this right enforces the separation of powers doctrine.

"The PRESIDING OFFICER. The Senator has used the time allotted to him.

"Mr. JENNER. May I have 5 more minutes?

"Mr. JOHNSON of Texas. Mr. President, I wish to say that all the time we have on this side has been allotted, but I shall take some time from that allotted to another Senator. Would the Senator be willing to take 3 minutes?

"Mr. JENNER. I have about a page and a half of my manuscript remaining.

"Mr. JOHNSON of Texas. I yield 3 minutes to the Senator from Indiana.

"The PRESIDING OFFICER. The Senator from Indiana is recognized for 3 minutes.

"Mr. JENNER. Mr. President, the inevitable question arises as to what safeguards a minority has to be heard under majority rule. Some advocates propose a 15-day waiting period between the filing of a cloture motion and the imposition of cloture. This is no assurance whatever. Who is to guarantee that Indiana will be heard within this 15-day period? Others propose a 1-hour period for each Senator. Can such important matters as foreign aid, the Taft-Hartley law, and education be covered adequately in 1 hour? The advocates of majority rule assure us that a minority has a right to be heard, but the only safeguard so far advanced is a promise—nothing more. Mr. President, that can never be called a right which owes its existence to a favor.

"One evil of majority rule which has not been emphasized enough is its susceptibility to 'bossism.'

"The late Senator Pat McCarran said:

"There is no doubt in my mind that legislative independence disappears in exact proportion to the diminishing of deliberation. Cloture is the foundation of machine rule. Once that foundation is established, the mechanics of machine rule will become very simple. One or two or a handful of bosses then will be able easily to attain and exercise supremacy. They can use the party-caucus system, employing the principle of control through a majority of a majority, which is inevitably a minority of the whole membership. The "bosses" in such circumstances would have at their fingertips many different kinds of coercion. They would be in a position to take care of subservient Members primarily interested in local legislation, and to dispense patronage favors to those who prove faithful. Such a machine, if established, can be manipulated from the outside by whatever political or economic interests may be dominant in the administrative field. There is already considerable influence wielded by pressure groups. I cannot become a party to a move which will increase the power of lobbyists."

"Majority control might be used in combinations such as those which are geographical, industrial, or financial, with one group of States silencing another.

"The advocates of majority rule forget that the Senate has an informing function as well as a legislating one. The House can pass bills so fast the people do not even know they are being considered.

"I cite, for example, a bill passed by the House which proposed to put railway employees in the Army and put guns at their backs to make them work; but the Senate, under the rule of unlimited debate, stopped such a bill from becoming legislation.

"If measures are passed rapidly, without due consideration, public opinion has no chance to make itself known. The prolonged debates on the natural-gas bill in the Senate were designed, in part, to educate the people.

"We may have a duty to legislate, but we also have a duty to inform and deliberate.

"In the past quarter century we have seen a phenomenal growth in the power of the executive branch. If this continues at such a fast pace, our system of checks and balances will be destroyed. One of the main bulwarks against this growing power is free debate in the Senate.

"Free debate has deterred power-seeking executives from seeking legislation which is too dictatorial. So long as there is free debate, men of courage and understanding will rise to defend against potential dictators.

"It is contended that the Senate would be paralyzed in times of emergency. I do not believe that if America were ever in danger, 64 Senators would not invoke cloture under our present rule. Furthermore, we have gone through many crises in the past one hundred and fifty-odd years, and the Government has never before been rendered helpless by freedom of debate.

"The Senate today is one place where, no matter what else may exist, there is still a chance to be heard, an opportunity to speak, the duty to examine, and the obligation to protect. It is one of the few refuges of democracy. Minorities have an illustrious past, full of suffering, torture, smear, and even death. Jesus Christ was killed by a majority; Columbus was smeared; and Christians have been tortured. Had the United States Senate existed during those trying times, I am sure these people would have found an advocate. Nowhere else can any political, social, or religious group, finding itself under sustained attack, now receive a better refuge."

All deliberations on the issue of cloture should be conducted with both the philosophy and intent of the Constitution firmly in mind. In my judgment all the provisions which relate to this subject provide for the fullest possible debate.

For example, article I, section 3, provides that each State is entitled to two

Senators. These men represent the State from which they are elected. Surely, this necessarily implies the right of debate and speech on the Senate floor. This same point is reinforced in article V which provides that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." I said, in my statement, that the right to speak and be heard is the one means we have to protect and perpetuate this equality. In other words, the right to speak and present the issues fully and in detail is inherent in the legislative process and protected by the Constitution.

The first amendment provides for the right of peaceable assembly and the coordinate right to petition the Government for a redress of grievances. Practically speaking this right is available only so long as the United States Senate remains open to hear these grievances. Strict limitation on debate would severely narrow the meaning of the first amendment. I seriously question the right of the Senate to "close the mouth through which the petitioners speak."

In general, then, I think the philosophy of the Constitution is implicit in advocating a broad right of debate and speech in the Senate.

I turn now to a point which few witnesses have discussed. My statement on the Senate floor included a quotation from the late Senator Pat McCarran. He said, among other things, that "cloture is the foundation of machine rule." Further, he made the significant point that "legislative independence disappears in exact proportions to the diminishing of deliberation." The late Senator, who himself represented legislative independence at its finest, skillfully and precisely outlined how cloture can lead to manipulation from both within the legislature and without by a small selfish minority. The truth is that in many cases cloture is the tool of the minority and is the exact opposite of even majority rule.

I do not think this point can be overemphasized. It is a real danger to be sure, and I hope adequate and open discussion of it will follow.

I wish to make one final point herein and then will allow my statement of January 4, 1957, to set forth the details.

The Senate has more than a mere duty to legislate. It also has the duty to inform the people of the issues being discussed and possible dangers to their freedoms and rights.

The informative process by its very nature takes time. You cannot educate people who are busy with everyday affairs, family life, and business in a day or even 2 or 3 weeks. I spend full time in the field of Government and I see issues arising every day which are complicated and need lengthy explanation.

Time cures many evils, and when the people are informed about an issue they will voice their feelings. In this way the legislative process will meet the desires of the people with a particularly rare in the modern world.

Time also is the means which the legislative branch uses to protect the delicate theory of checks and balances. Historically, some groups are always working to destroy freedom. This is most often accomplished by perversion of the executive branch functions. I firmly believe that the right to free debate acts as a deterrent to the introduction of tyrannical legislation which would strengthen the executive branch to the extent that the balance between branches is overthrown.

You have a rather somber and difficult task. But, I think if you keep in mind that the United States Senate has been the historical champion of the rights of man, and that the giants of the Senate in the past—Clay, Calhoun, Webster, Taft, La Follette, Borah, and others—were unanimously in favor of free debate, your decision will be in favor of the two-thirds principle and not majority cloture.

When issues involving the very integrity and strength of the Senate arise, I am always reminded of Benjamin Franklin's answer to the question, what kind of Government do we have. He said, "You have a Republic, if you can keep it." Free debate is the foundation of free government and a substantial answer to Franklin's historic challenge.

STATEMENT OF HON. THOMAS C. HEININGS, JR., UNITED STATES SENATOR FROM
THE STATE OF MISSOURI

I am grateful to the members of this special subcommittee for the opportunity to present my views on the proposed changes to rule XXII of the Standing Rules of the Senate.

I joined 14 other Senators in jointly sponsoring Senate Resolution 17, introduced in the Senate by Senator Paul Douglas of Illinois in January of this year.

As the members of this subcommittee know, several measures that would change various provisions of rule XXII were introduced early in this session of the Congress. I shall not burden the subcommittee by a detailed analysis of each of these resolutions but shall briefly summarize Senate Resolution 17 and describe the other resolutions as occasion arises in the course of my discussion.

Under the present provisions of rule XXII, which was last changed in 1949, debate in the Senate may not be limited or brought to an end unless 64 Senators ("two-thirds of the Senators duly chosen and sworn") vote in favor of such a move. The history of rule XXII has clearly demonstrated that it is extremely difficult, if not practically impossible, to stop a filibuster if the legislation under debate is overwhelmingly opposed by an articulate opposition in a substantial section of the country.

Senate Resolution 17 provides that debate may be limited by a vote of two-thirds of the Senators present and voting 2 days after 16 Senators have filed a petition for this purpose.

Senate Resolution 17 further provides that 15 days, exclusive of Sundays and holidays, after the presentation to the Senate of a petition signed by 16 Senators, the Senate by a majority vote of those "duly chosen and sworn" (49 of the 96 Senators) may also impose cloture.

Senate Resolution 17, in addition, retains the present provision allowing each Senator 1 hour for further debate after the limitation is voted.

Some resolutions introduced provide, with variations as to the grace period prior to the effective date of cloture, that two-thirds of the Senators present and voting may impose cloture.

Other resolutions provide that a majority of those Senators present and voting may impose cloture.

In considering what changes, if any, to make in the rule governing Senate debate, it is well to have in mind the results we are seeking.

Everyone agrees that as a parliamentary body the United States Senate must have reasonable rules and orderly procedure. Differences naturally arise as to what are reasonable rules and what constitutes orderly procedure. Everyone, I am sure, will agree that the Rules of the Senate should provide for an adequate opportunity to every Senator to express himself fully on each issue coming before the Senate. I take it also as axiomatic that, with proper allowance to each Senator to express himself fully, the Senate as a body should be permitted, if it so chooses, to reach a decision by means of a vote on each issue coming before it.

The basic aim of a filibuster, as distinguished from a full or extended or even a tedious and repetitive debate, is to prevent Senate action through a vote, by talking for a prolonged period in relation to the time available to the Senate in which to act. On occasion this may mean a very short time, and on other occasions it may mean a very long time.

I have studied the arguments advanced over the years by those persons opposed to suggestions for making cloture easier in the Senate. These arguments in general are concerned with "States rights," with maintaining the power of individual States, with the dignity of the Senate as the "greatest deliberative body," and with "free debate." I shall attempt to touch on these and other points in my discussion.

Those opposed to a change in the cloture rule to allow limitation on debate to be more easily imposed must perforce take the position that a group of Senators by use of a filibuster should have the right absolutely to prevent the Senate as a body from taking action (in the only way it can—by voting) unless and until 64 Senators are present and duly vote in favor of cloture under rule XXII as it is presently written.

Now, to get 64 Senators present at one time and in favor of imposing cloture is extremely difficult if not practically impossible, as in fact we know from the Senate's experience with cloture motions in the past.

This means that those who are presently opposed to liberalizing the cloture rule in any respect are, practically speaking, in favor of letting a minority—but substantial number—of Senators prevent the Senate from acting under any circumstances if they so choose.

The opponents of change in the cloture rule base their case primarily on what they refer to as the principle of free debate. On examination, this term, "free debate," as it is used by the opponents of change, while very vague, seems to mean full and adequate debate.

No responsible opponent to liberalizing rule XXII has said that there should not be some limitation on debate. No one (this year, at least) has advocated

a rule or procedure more difficult for achieving cloture than the present rule XXII. They merely stand on rule XXII as it now reads. As I have said, however, for all practical purposes rule XXII does not now permit a cloture to be imposed when a substantial number of Senators—such as those in opposition to civil rights legislation—are opposed to placing a limitation on debate. Those persons really against any limitation on debate can with complete safety say they believe in some reasonable cloture rule such as is provided in rule XXII, because they know that in this way they can appear sweetly reasonable and at the same time never be really threatened with Senate action in a field they do not desire cultivated. In other words, they can have their cake and eat it, too.

But, forgetting for the moment the peculiarities of rule XXII as it now reads, let us formulate in the abstract, if you like, what would seem to be a sound and workable rule. After all, a rule ostensibly designed to permit Senators to take action but containing a built-in automatic brake is a self-defeating rule and in reality a nullity. So let us see if we can agree on a rule, temperate and reasonable, providing protection to minorities by full and adequate debate and which at the same time can actually work.

The heart of the problem is, How long should Senators be permitted to talk on a given issue before the Senate may bring the matter to a vote? What would be a reasonable time for debate would, I am sure, vary greatly with the kind and importance of the issue involved in each case. No reasonable man will demand that Senators should be permitted to talk without limit in a wanton and capricious manner. No one will contend that a Senator or a group of Senators should be allowed to prevent a vote by merely talking continuously for days or weeks on end.

The argument arises each time as to what is a reasonable as distinguished from a capricious length of time to spend discussing or debating a subject. Surely if every Senator interested were afforded 8 to 10 hours in which to speak, this would seem to be adequate time in which to cover almost any subject coming before the Senate. This is more time than most trial lawyers have used in their arguments before juries. It is a longer time than lawyers are allowed, or would want, to present a difficult case to the United States Supreme Court. Senate Resolution 17, except in the emergency situation above explained, requiring the support of two-thirds of the Senators present and voting, would most certainly provide this much or much more time before a vote would be taken.

We may be assured that adequate time for debate would be provided under Senate Resolution 17 when we remember that it is most difficult to get a cloture petition signed by even 16 Senators, much less voted by 49. A debate must first degenerate into a filibuster and the discussion on the merits must have been exhausted before 49 Senators would agree to impose cloture. The history of the Senate shows this clearly.

One of the arguments often used against limitation of debate in the Senate is the statement that the Founding Fathers did not use cloture in the Continental Congress nor in shaping the Constitution during debates at the Convention of 1787. The facts are to the contrary. The rules of both the Continental Congress and the Constitutional Convention provided for closing debate by the use of the "previous question." In addition, this was the rule in the Senate from 1789 to 1806. From these facts we can conclude that our Founding Fathers intended that a majority of the Senate could impose cloture at any time. The Founding Fathers had faith in the innate fairness of Senators to permit adequate debate. The Founding Fathers never intended that a minority of the Senate should be permitted to prevent action by means of a filibuster. It is well to remember that no one filibustered in the Constitutional Convention, even though the debate was at times heated. The delegates to the Convention could have gone further than filibuster; they could have walked out and left the Convention, but they did not. They stayed, debated heatedly, and reached compromises permitting action.

Another argument heard is that only in the Senate are individual States, as distinguished from the people in such individual States, represented in the Federal Legislature, as ambassadors so to speak; and that a liberalization of the cloture rule would lessen and dilute the power of individual States.

Originally and until changed by the 17th amendment, the Constitution provided for the election of Senators by the State legislatures. There was, therefore, prior to the 17th amendment, more support perhaps for the idea that Senators represented the individual States rather than the people in them. Ever since the people have been electing Senators directly, however, the proposi-

tion has obviously lost whatever validity, if any, it ever had. If any Senator doubt this, let him stand for reelection before the people of his State on the proposition that he represents not them but a mystical concept which he calls the "State" or the "State of X," as the case may be.

In any case, the "power" of a State which those opposed to liberalization of rule XXII desire to protect consists of the power of a Senator or a small group of Senators to delay or prevent altogether the Senate's taking any action on a particular issue. This is a negative power, and some would say perhaps un-American.

Many of the same people who insist on retaining rule XXII in its present form urge that the executive branch and the Supreme Court have in recent years changed the constitutional balance of government to the detriment of the Congress and the individual States. If this be true, which I do not necessarily concede, the only manner of restoring the constitutional balance that appears available to Congress and to the States is to act through Federal legislation. This would mean action by voting in the Senate. Under the present cloture rule, however, a small group of Senators (let us say, for argument's sake, under the control and domination of the White House) can block action by a filibuster and thus render the remaining Members of the Senate, and the States they represent, powerless to correct "unconstitutional evils" which may have come upon the Nation.

Thus it may be seen that, while, on the one hand, rule XXII, as now written, protects the power of individual States, on the other hand it acts also as an effective protection to a growing "centralism" (if there be such), and an effective block to corrective legislation designed to stem the overwhelming Federal tide of judicial and executive encroachment on the States' rights, and powers of the several States and the Congress.

The usefulness and effectiveness of the filibuster can be argued either way, but what is basically clear is that in a parliamentary democratic Republic which cannot function except through its National Legislature, the filibuster (and by this I mean the power of a minority by debate to prevent completely the majority from acting) as a parliamentary device should not be tolerated and no rule permitting it can be reasonably defended.

APPENDIX

EXHIBIT 1

LIMITATION OF DEBATE IN THE UNITED STATES SENATE

By George B. Galloway, Senior Specialist in American Government, Legislative Reference Service, the Library of Congress

TABLE OF CONTENTS

Preface.
Present Senate rules relating to debate.
Chronological history of efforts to limit debate in the Senate.
Outstanding Senate filibusters from 1841 to 1955.
Legislation delayed or defeated by filibusters.
Arguments for filibustering.
Arguments against filibustering.
Remedies for obstruction in the Senate.
Limitation of debate in the House of Representatives.

PREFACE

This report is in effect a revision of an earlier Public Affairs Bulletin prepared in response to the request of several Senators for an historical study of filibustering in the United States Senate and of efforts to control it. It contains the following material:

1. Present Senate rules relating to debate
2. A chronological history of efforts to limit debate in the Senate, 1789-1956.
3. A list of outstanding Senate filibusters, 1841-1955
4. Legislation delayed or defeated by filibusters—a list of 36 bills between 1865 and 1950 which were delayed or defeated by obstruction in the Senate
5. Senate votes on invoking the cloture rule—a record of the 22 votes on cloture petitions in the Senate since 1917
6. A summary of the arguments for filibustering
7. A summary of the arguments against filibustering
8. A list of remedies for obstructive tactics in the Senate which have been proposed by Senators in the past
9. Limitation of debate in the House of Representatives

The text of the present Standing Rules of the Senate relating to debate is taken from the current edition of the Senate Manual.

The chronological history of efforts to limit debate in the Senate since 1789 is based, for the most part, upon the Senate Journal, the Congressional Record, and the article on "Legislative History of Cloture Rules in the Senate" from the Congressional Digest for November 1926. This history sketches the principal developments in the Senate on this question during the intervening period.

The list of outstanding filibusters mentions more than 40 famous examples of this device during the past century.

The list of bills delayed or defeated by filibusters in the past, while incomplete, includes the major legislation in this category. There have been at least 36 such bills of varying degrees of importance. In addition, many appropriation bills have either been lost in the last-minute jam caused by filibusters or were talked to death because they failed to include items desired by particular Senators or because their grants were considered excessive. A list of 82 such appropriation bills that failed of passage between 1876 and 1916 appears in the Congressional Record for June 28, 1916, on pages 10152-53.

Analysis of the 22 cloture votes since 1917, when a cloture rule was first adopted, indicates that 4 petitions received the required two-thirds majority; 9 obtained a majority of the entire membership of the Senate; 15 obtained a majority of those present and voting; 6 obtained only a minority of those present and voting; and 1 resulted in a tie vote. The cloture rule of 1917 was drafted by a conference committee of 5 Democrats and 5 Republicans named by their respective party

organizations. This committee stated that its purpose was to formulate a rule that would "terminate successful filibustering."

If the purpose of the cloture rule is "to terminate successful filibustering," experience shows that it has failed to achieve its purpose in 18 out of 22 times. Experience also shows that a majority (of the entire membership) cloture rule would have failed of such a purpose 13 out of 22 times. Experience further shows that a simple majority cloture rule would have failed to stop successful filibusters in one-third of the cases in which cloture has been invoked since 1917.

The summary of the arguments for and against filibustering indicates that there is much to be said on both sides.

Review of proposed remedies for obstruction in the Senate reveals the repetition of the same basic suggestions for more than a century. They boil down to four: majority cloture, the previous question, a rule of relevancy, and more effective enforcement of existing rules.

The principal sources of information on the limitation of debate in the Senate, used in this report, are:

- Bendiner, Robert., *Battle of filibustering: new round opens.* New York Times magazine, September 14, 1952.
- Burdette, Franklin., *Filibustering in the Senate* (1940), 252 pp.
- Douglas, Paul H., *The fight against the filibuster.* New Republic, January 12, 1953, pp. 6-8.
- Furber, George P., *Precedents relating to the privileges of the Senate of the United States* (1893), Senate Miscellaneous Document No. 68, 52d Congress, 2d session, "Limitation of Debate," pp. 217-230.
- Gilfray, Henry H., *Senate Precedents, 1789-1900*, pp. 334-342.
- Harris, Senator Isham Green., *Speech in Senate reviewing movement to limit Senate debate, 1800-91.* Congressional Record, 51st Congress, 2d session, January 22, 1891, pp. 1669-1671.
- Haynes, George H., *The Senate of the United States* (1938), vol. 1, Chapter VIII, "Debate in the Senate."
- Maslow, Will., "FEPC—A case history in Parliamentary Maneuver." *University of Chicago Law Review*, June 1946, pp. 407-445.
- Maslow, Will., *Limitation of debate in State legislatures.* (*In* Extension of remarks of William Benton, of Connecticut. Congressional Record [Daily edition] (Washington), June 5, 1952, vol. 98: A3645-A3646.
- Rogers, Lindsay, *The American Senate* (1926), Chapter V.
- Willoughby, W. F., *Principles of Legislative Organization and Administration* (1934), pp. 486-500.
- Congressional Digest, November 1926–February 1953.
- Congressional Record, *passim*.
- Control of Obstruction in Congress, Editorial Research Reports, April 4, 1935.
- Majority Cloture for the Senate, Editorial Research Reports, March 19, 1947.
- Senate Committee on Rules and Administration. Hearings and/or reports on limitation of debate in the Senate. 80th, 81st, 82d, and 83d Congresses.
- Senate Journal, *passim*.
- Senate Rules and the Senate as a Continuing Body. Senate Document No. 4, 83d Congress 1st session.

This report has been prepared by George B. Galloway. Copies are available to Senators upon request.

ERNEST S. GRIFFITH,
Director, Legislative Reference Service.

PRESENT SENATE RULES RELATING TO DEBATE

RULE VII—MORNING BUSINESS

3. Until the morning business shall have been concluded, and so announced from the Chair, or until the hour of 1 o'clock has arrived, no motion to proceed to the consideration of any bill, resolution, report of a committee, or other subject upon the Calendar shall be entertained by the Presiding Officer, unless by unanimous consent; and if such consent be given, the motion shall not be subject to amendment, and shall be decided without debate upon the merits of the subject proposed to be taken up.¹ *Provided, however,* That on Mondays the Calendar shall be called under Rule VIII, and during the morning hour no motion shall be entertained to proceed to the consideration of any bill, resolution, report of a com-

¹ As amended S. Jour. 548, 59-1, May 31, 1906.

mittee, or other subject upon the Calendar except the motion to continue the consideration of a bill, resolution, report of a committee, or other subject against objection as provided in Rule VIII. [Jefferson's Manual, Sec. XIV]

5. ² Every petition or memorial shall be signed by the petitioner or memorialist and have indorsed thereon a brief statement of its contents, and shall be presented and referred without debate. But no petition or memorial ² or other paper signed by citizens or subjects of a foreign power shall be received, unless the same be transmitted to the Senate by the President. [Jefferson's Manual, Sec. XIX]

7. ⁴ The Presiding Officer may at any time lay, and it shall be in order at any for a Senator to move to lay, before the Senate, any bill or other matter sent to the Senate by the President or the House of Representatives, and any question pending at that time shall be suspended for this purpose. Any motion so made shall be determined without debate. [Jefferson's Manual, Sec. XIV]

RULE VIII--ORDER OF BUSINESS

At the conclusion of the morning business for each day, unless upon motion the Senate shall at any time otherwise order, the Senate will proceed to the consideration of the Calendar of Bills and Resolutions, and continue such consideration until 2 o'clock; ³ and bills and resolutions that are not objected to shall be taken up in their order, and each Senator shall be entitled to speak once and for five minutes only upon any question and the objection may be interposed at any stage of the proceedings, but upon motion the Senate may continue such consideration; and this order shall commence immediately after the call for "concurrent and other resolutions," and shall take precedence of the unfinished business and other special orders. But if the Senate shall proceed with the consideration of any matter notwithstanding an objection, the foregoing provisions touching debate shall not apply.

[Jefferson's Manual, Sec. XIV]

⁴ All motions made before 2 o'clock to proceed to the consideration of any matter shall be determined without debate.

[Jefferson's Manual, Sec. XIV]

RULE IX--ORDER OF BUSINESS

Immediately after the consideration of cases not objected to upon the Calendar is completed, and not later than 2 o'clock if there shall be no special orders for that time, the Calendar of General Orders shall be taken up and proceeded with in its order, beginning with the first subject on the Calendar next after the last subject disposed of in proceeding with the Calendar; and in such case the following motions shall be in order at any time as privileged motions, save as against a motion to adjourn, or to proceed to the consideration of executive business, or questions of privilege, to wit:

First. A motion to proceed to the consideration of an appropriation or revenue bill.

Second. A motion to proceed to the consideration of any other bill on the Calendar, which motion shall not be open to amendment.

Third. A motion to pass over the pending subject, which if carried shall have the effect to leave such subject without prejudice in its place on the Calendar.

Fourth. A motion to place such subject at the foot of the Calendar.

Each of the foregoing motions shall be decided without debate and shall have precedence in the order above named, and may be submitted as in the nature and with all the rights of questions of order.

[Jefferson's Manual, Secs. XIV, XXXIII]

RULE X--SPECIAL ORDERS

2. When two or more special orders have been made for the same time, they shall have precedence according to the order in which they were severally assigned, and that order shall only be changed by direction of the Senate.

¹ As amended 8. Jour. 427, 428, 50-1, Mar. 6, 1888.

² On motion by Mr. Mansfield: Ordered, That when petitions and memorials are ordered printed in the Congressional Record the order shall be deemed to apply to the body of the petition only, and the names attached to said petition or memorial shall not be printed unless specially ordered by the Senate. [8. Jour. 280, 49-2, Feb. 7, 1887.]

³ As amended 8. Jour. 431, 48-1, Mar. 17, 1884.

⁴ Mr. Hoar submitted the following resolution: which was considered by unanimous consent and agreed to: Resolved, That after to-day, unless otherwise ordered, the morning hour shall terminate at the expiration of two hours after the meeting of the Senate. [8. Jour. 1200, 50-1, Aug. 10, 1885]

⁵ As amended 8. Jour. 442, 48-1, Mar. 19, 1884.

¹ And all motions to change such order, or to proceed to the consideration of other business, shall be decided without debate.

[Jefferson's Manual, Secs. XVIII, XXXIII]

RULE XI—OBJECTION TO READING A PAPER

When the reading of a paper is called for, and objected to, it shall be determined by a vote of the Senate, without debate.

[Jefferson's Manual, Sec. XXXII]

RULE XIX—DEBATE

1. When a Senator desires to speak, he shall rise and address the Presiding Officer, and shall not proceed until he is recognized, and the Presiding Officer shall recognize the Senator who shall first address him. No Senator shall interrupt another Senator in debate without his consent, and to obtain such consent he shall first address the Presiding Officer; and no Senator shall speak more than twice upon any one question in debate on the same day without leave of the Senate, which shall be determined without debate.

[Jefferson's Manual, Secs. XVII, XXXIX]

2. ² No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

[Jefferson's Manual, Sec. XVII]

3. ³ No Senator in debate shall refer offensively to any State of the Union.

4. If any Senator, in speaking or otherwise, transgress the rules of the Senate, the Presiding Officer shall, or any Senator may, call him to order; and when a Senator shall be called to order he shall sit down, and not proceed without leave of the Senate, which, if granted, shall be upon motion that he be allowed to proceed in order, which motion shall be determined without debate.

[Jefferson's Manual, Sec. XVII]

5. If a Senator be called to order for words spoken in debate, upon the demand of the Senator or of any other Senator, the exceptionable words shall be taken down in writing, and read at the table for the information of the Senate.

[Jefferson's Manual, Sec. XVII]

RULE XX—QUESTIONS OF ORDER

1. A question of order may be raised at any stage of the proceedings, except when the Senate is dividing, and, unless submitted to the Senate, shall be decided by the Presiding Officer without debate, subject to an appeal to the Senate. When an appeal is taken, any subsequent question of order which may arise before the decision of such appeal shall be decided by the Presiding Officer without debate; and every appeal therefrom shall be decided at once, and without debate; and any appeal may be laid on the table without prejudice to the pending proposition, and thereupon shall be held as affirming the decision of the Presiding Officer.

[Jefferson's Manual, Sec. XXXIII]

RULE XXII—CLOTURE

2.⁴ Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, except subsection 3 of rule XXII, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

¹ As amended 8. Jour. 442, 48-1, Mar. 10, 1884.

² As amended 8. Jour. 301, 57-1, Apr. 8, 1902.

³ As amended 8. Jour. 71, 63-2, Jan. 14, 1914.

⁴ As amended, 8. Jour. 173, 81-1, Mar. 17, 1949.

And if that question shall be decided in the affirmative by two-thirds of the Senators duly chosen and sworn, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

3. The provisions of the last paragraph of rule VIII (prohibiting debate on motions made before 2 o'clock) and of subsection 2 of this rule shall not apply to any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate.

RULE XXVII—REPORTS OF CONFERENCE COMMITTEES

1. The presentation of reports of committees of conference shall always be in order, except when the Journal is being read or a question of order or a motion to adjourn is pending, or while the Senate is dividing; and when received the question of proceeding to the consideration of the report, if raised, shall be immediately put, and shall be determined without debate.

[Jefferson's Manual, Sec. XLVI]

CHRONOLOGICAL HISTORY OF EFFORTS TO LIMIT DEBATE IN THE SENATE

In 1604 the practice of limiting debate in some form was introduced in the British Parliament by Sir Henry Vane. It became known in parliamentary procedure as the "previous question" and is described in section 34 of Jefferson's Manual of Parliamentary Practice, as follows:

"When any question is before the House, any Member may move a previous question, whether that question (called the main question) shall not be put. If it pass in the affirmative, then the main question is to be put immediately, and no man may speak anything further to it, either to add or alter."

In 1778 the Journals of the Continental Congress also show that the "previous question" was used. Section 10 of the Rules of the Continental Congress reading: "When a question is before the House no motion shall be received unless for an amendment, for the previous question, to postpone the consideration of the main question, or to commit it." In the British Parliament and the Continental Congress the "previous question" was used to avoid discussion of a delicate subject or one which might have injurious consequences.

1789

The first Senate adopted 19 rules, of which the following relate to debate in, and taking the time of, the Senate:

2. No Member shall speak to another, or otherwise interrupt the business of the Senate, or read any printed paper while the Journals or public papers are reading, or when any Member is speaking in any debate.

3. Every Member, when he speaks, shall address the Chair, standing in his place, and when he has finished shall sit down.

4. No Member shall speak more than twice in any one debate on the same day, without leave of the Senate.

6. No motion shall be debated until the same shall be seconded.

8. When a question is before the Senate, no motion shall be received unless for an amendment, for the previous question, or for postponing the main question, or to commit, or to adjourn.

9. The previous question being moved and seconded, the question from the Chair shall be: "Shall the main question be now put?" And if the nays prevail, the main question shall not then be put.

11. When the yeas and nays shall be called for by one-fifth of the Members present, each Member called upon shall, unless for special reasons he be excused by the Senate, declare, openly and without debate, his assent or dissent to the question.

1806

When the rules were modified in 1806, reference to the previous question was omitted. It had been moved only 4 times and used only 3 times during the 17 years from 1789 to 1806. Its omission from the written rules left its status in general parliamentary law unchanged.

1807

In the following year, 1807, debate on an amendment at the third reading of a bill was also forbidden and from this time until 1846 there were no further limitations on debate in the Senate.

1841

On July 12, 1841, Henry Clay brought forth a proposal for the introduction of the "previous question," which he stated was necessary by the abuse which the minority had made of the privilege of unlimited debate. In opposing Clay's motion, Senator Calhoun said, "There never had been a body in this or any other country in which, for such a length of time, so much dignity and decorum of debate had been maintained." Clay's proposition met with very considerable opposition and was abandoned. Clay also proposed adoption of the "hour rule" for the same purpose, but his proposal was not accepted.

1846

A species of cloture is the unanimous consent agreement. This is a device for limiting debate and expediting the passage of legislation which dates back to 1846 when it was used to fix a day for a vote on the Oregon bill. Such agreements are frequently used to fix an hour at which the Senate will vote, without further debate, on a pending proposal.

1850

On July 27, 1850, Senator Douglas submitted a resolution permitting the use of the "previous question." The resolution was debated and laid on the table after considerable opposition had been expressed.

1862

As the business to be transacted by the Senate increased, proposals to limit debate were introduced frequently in the following Congresses, but none were adopted until the Civil War. On January 21, 1862, Senator Wade introduced a resolution stating that "In consideration in secret session of subjects relating to the rebellion, debate should be confined to the subject matter and limited to 5 minutes, except that 5 minutes be allowed any member to explain or oppose a pertinent amendment." On January 29, 1862, the resolution was debated and adopted.

1868

In 1868 a rule was adopted providing that: "Motions to take up or to proceed to the consideration of any question shall be determined without debate, upon the merits of the question proposed to be considered." The object of this rule, according to Senator Edmunds, was to prevent a practice which had grown up in the Senate, "when a question was pending, and a Senator wished to deliver a speech on some other question, to move to postpone the pending order to deliver their speech on the other question." According to Mr. Turnbull the object of the rules was to prevent the consumption of time in debate over business to be taken up. The rule was interpreted as preventing debate on the merits of a question when a proposal to postpone it was made.

1869

A resolution pertaining to the adoption of the "previous question" was introduced in 1869, and 3 other resolutions limiting debate in some form were introduced in the first half of 1870.

1870

Senate, on appeal, sustained decision of Chair that a Senator may read in debate a paper that is irrelevant to the subject matter under consideration (July 14, 1870).

On December 6, 1870, in the 3d session of the 41st Congress, Senator Anthony, of Rhode Island, introduced the following resolution: "On Monday next, at one o'clock, the Senate will proceed to the consideration of the Calendar and bills that are not objected to shall be taken up in their order; and each Senator shall be entitled to speak once and for five minutes, only, on each question; and this

order shall be enforced daily at one o'clock till the end of the calendar is reached, unless upon motion, the Senate should at any time otherwise order." On the following day, December 7, 1870, the resolution was adopted. This so-called Anthony rule for the expedition of business was the most important limitation of debate yet adopted by the Senate. The rule was interpreted as placing no restraints upon the minority, however, inasmuch as a single objection could prevent its application to the subject under consideration.

1871

On February 22, 1871, another important motion was adopted which had been introduced by Senator Pomeroy and which allowed amendments to appropriation bills to be laid on the table without prejudice to the bill.

1872

Since a precedent established in 1872 the practice has been that a Senator cannot be taken from the floor for irrelevancy in debate.

1872

On April 19, 1872, a resolution was introduced, "that during the remainder of the session it should be in order, in the consideration of appropriation bills, to move to confine debate by any Senator, on the pending motion to 5 minutes." On April 29, 1872, this resolution was finally adopted, 33 yeas to 13 nays. The necessity for some limitation of debate to expedite action on these annual supply measures caused the adoption of similar resolutions at most of the succeeding sessions of Congress.

1873

In March 1873, Senator Wright submitted a resolution reading in part, that debate shall be confined to and be relevant to the subject matter before the Senate, etc., and that the previous question may be demanded by a majority vote or in some modified form. On a vote in the Senate to consider this resolution the yeas were 30 and the nays 25.

1879

Chair counted a quorum to determine whether enough Senators were present to do business.

1880

From 1873 to 1880, 9 other resolutions were introduced confining and limiting debate in some form. On February 3, 1880, in the second 2d of the 46th Congress, the famous Anthony rule which was first adopted on December 7, 1870, was made a standing rule of the Senate as rule VIII. In explaining the rule, Senator Anthony said "That rule applies only to the unobjected cases on the calendar, so as to relieve the calendar from the unobjected cases. There are a great many bills that no Senator objects to, but they are kept back in their order by disputed cases. If we once relieve the calendar of unobjected cases, we can go through with it in order without any limitation of debate. That is the purpose of the proposed rule. It has been applied in several sessions and has been found to work well with the general approbation of the Senate."

1881

On February 16, 1881, a resolution to amend the Anthony rule was introduced. This proposed to require the objection of at least five Senators to pass over a bill on the calendar. The resolution was objected to as a form of "previous question," and defeated. Senator Edmunds in opposing the resolution said, "I would rather not a single bill shall pass between now and the 4th day of March than to introduce into this body, which is the only one where there is free debate and the only one which can under its rules discuss fully. I think it is of greater importance to the public interest in the long run and in the short run that every bill on your calendar should fail than that any Senator should be cut off from the right of expressing his opinion * * * upon every measure that is to be voted upon here."

1881

Senate agreed for remainder of session to limit debate to 15 minutes on a motion to consider a bill or resolution, no Senator to speak more than once or for longer than 5 minutes (February 12, 1881).

1882

On February 27, 1882, the Anthony rule was amended by the Senate, so that if the majority decided to take up a bill on the calendar after objection was made,

that then the ordinary rules of debate without limitation would apply. The Anthony rule could only work when there was no objection whatever to any bill under consideration. When the regular morning hour was not found sufficient for the consideration of all unobjected cases on the calendar, special times were often set aside for the consideration of the calendar under the Anthony rule.

On March 15, 1882, a rule was considered whereby "a vote to lay on the table a proposed amendment shall not carry with it the pending measure." In reference to this rule Senator Hoar (Massachusetts, Republican), said: "Under the present rule it is in the power of a single member of the Senate to compel practically the Senate to discuss any question whether it wants to or not and whether it be germane to the pending measure or not * * *. This proposed amendment to rules simply permits, after the mover of the amendment, who of course has the privilege, in the first place, has made his speech, a majority of the Senate if it sees fit to disavow that amendment from the pending measure and to require it to be brought up separately at some other time or not at all." This proposed rule is now rule XVII, of the present standing rules of the Senate.

1883

On December 10, 1883, Senator Frye, of Maine, chairman of the Committee on Rules, reported a general revision of the Senate rules. This revision included a provision for the "previous question." Amendments in the Senate struck this provision out.

1884

On January 11, 1884, the present Senate rules were revised and adopted.

On March 19, 1884, two resolutions introduced by Senator Harris were considered and agreed to by the Senate as follows:

(1) "That the eighth rule of the Senate be amended by adding thereto: All motions made before 2 o'clock to proceed to the consideration of any matter shall be determined without debate."

(2) "That the 10th rule of the Senate be amended by adding thereto: And all motions to change such order or to proceed to the consideration of other business shall be decided without debate."

From this time until 1890 there were 15 different resolutions introduced to amend the Senate rules as to limitations of debate, all of which failed of adoption.

Senate agreed (March 17) to amend rule 7 by adding thereto the following words:

"The Presiding Officer may at any time lay, and it shall be in order at any time for a Senator to move to lay, before the Senate any bill or other matter sent to the Senate by the President or the House of Representatives, and any question pending at that time shall be suspended for this purpose. Any motion so made shall be determined without debate."

1886

Senate agreed to strike out the words, "without debate," from that part of rule 13 which provided that "every motion to reconsider shall be decided by a majority vote" (June 21, 1886).

1890

Hoar, Blair, Edmunds, and Quay submitted various resolutions for limiting debate in various ways (August 1890).

On December 29, 1890, Senator Aldrich introduced a cloture resolution in connection with Lodge's "force bill," which was being filibustered against. The resolution read, in part, as follows: "When any bill, resolution, or other question shall have been under consideration for a considerable time, it shall be in order for any Senator to demand that debate thereon be closed. On such demand no debate shall be in order, and pending such demand no other motion, except one motion to adjourn, shall be made * * *." There were five test votes on the cloture proposal which "commanded various majorities, but in the end it could not be carried in the Senate because of a filibuster against it which merged into a filibuster on the 'force bill.'"

1893

Platt, Hoar, Hill, and Gallinger introduced resolutions for cloture by majority action during a filibuster against repeal of the silver purchase law, which evoked extended discussion.

Sherman (Ohio) urged a study of Senate rules with a view to their revision and the careful limitation of debate.

1897

Chair ruled on March 3, 1897, that quorum calls could not be ordered unless business had intervened.

1902

Senate agreed (April 8) to amend rule 19 by inserting at the beginning of clause 2 thereof the following:

"No Senator in debate shall directly or indirectly by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

"No Senator in debate shall refer offensively to any State of the Union."

1908

Three important interpretations of the rules were adopted in the course of the filibuster against the Aldrich-Vreeland currency bill: (1) the Chair might count a quorum, if one were physically present, even on a vote, whether or not Senators answered to their names; (2) mere debate would not be considered business, and therefore more than debate must take place between quorum calls; (3) Senators could by enforcement of the rules be restrained from speaking on the same subject more than twice in the same day.

1911

April 6, 1911, Senator Root, of New York, submitted a resolution requesting the Committee on Rules to suggest an amendment to the Senate rules whereby the Senate could obtain more effective control over its procedure. No action was taken on the resolution.

1914

Smith (Georgia) proposed a rule of relevancy.

Senate decreed, September 17, that Senators could not yield for any purpose, even for a question, without unanimous consent; but reversed itself on this ruling the next day, September 18.

1915

February 8, 1915, Senator Reed, of Missouri, introduced a resolution to amend rule XXII whereby debate on the ship purchase bill, "S. 6845 shall cease, and the Senate shall proceed to vote thereon * * *." The resolution did not pass in this session.

1916

From December 1915, to September 8, 1916, the first or "long" session of the 64th Congress, there were five resolutions introduced to amend rule XXII. The resolutions acted upon were Senate Resolution 131 and Senate Resolution 149. On May 16, 1916, the Committee on Rules reported out favorably (S. Res. 195) as a substitute for Senate Resolution 131 and Senate Resolution 149, which had been referred to it, and submitted a report (No. 447). The resolution was debated but did not come to a vote.

1916 and 1920

Democratic national platforms for both years included a statement that: "We favor such alteration of the rules of procedure of the Senate of the United States as will permit the prompt transaction of the Nation's legislative business."

1917

March 4, 1917, President Wilson made a speech in which he referred to the armed ship bill, defeated by filibustering. The President said in part, "The Senate has no rules by which debate can be limited or brought to an end, no rules by which debating motions of any kind can be prevented * * * The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. * * * The only remedy is that the rules of the Senate shall be altered that it can act. * * *"

On March 5, 1917, the Senate was called in extraordinary session by the President because of the failure of the armed ship bill in the 64th Congress.

On March 7, 1917, Senator Walsh, of Montana, introduced a cloture resolution (S. Res. 5) authorizing a committee to draft a substitute for rule XXII, limiting debate. Senator Martin also introduced a resolution amending rule XXII similar to S. Res. 195, favorably reported by the Committee on Rules in the 64th Congress. The Martin resolution was debated at length and adopted March 8, 1917, 76 yeas, 3 nays, as the current amendment to rule XXII.

1918

On May 4, 1918, Senator Underwood introduced a resolution (S. Res. 235) further amending rule XXII, reestablishing the use of the "previous question" and limiting debate during the war period.

On May 31, 1918, the Committee on Rules favorably reported out Senate Resolution 235 with a report (No. 472).

June 3, 1918, the Senate debated the resolution and Senator Borah offered an amendment.

June 11, 1918, the Senate further debated the resolution and a unanimous consent agreement was reached to vote on the measure.

June 12, 1918, the resolution was further amended, by Senator Cummins.

June 13, 1918, the Senate rejected the resolution, yeas 41 and nays 34.

1921

From March 4, 1921, to March 4, 1923, during the 67th Congress, five resolutions were introduced to limit debate in some form. These were referred to the Committee on Rules.

1922

On November 29, 1922, upon the occasion of the famous filibuster against the Dyer antilynching bill, a point of order was raised by the Republican floor leader against the methods of delay employed by the obstructionists which, had the Chair sustained it, would have established a significant precedent in the Senate as it did in the House. The incident occurred as follows:

Immediately upon the convening of the Senate, the leader of the filibuster made a motion to adjourn. Mr. Curtis made the point of order that under rule III no motion was in order until the Journal had been read. He also made the additional point of order that the motion to adjourn was dilatory. To sustain his point, Mr. Curtis said: "I know we have no rule of the Senate with reference to dilatory motions. We are a legislative body, and we are here to do business and not to retard business. It is a well-stated principle that in any legislative body where the rules do not cover questions that may arise general parliamentary rules must apply."

"The same question was raised in the House of Representatives when they had no rule on the question of dilatory motions. It was submitted to the Speaker of the House, Mr. Reed. Mr. Speaker Reed held that, notwithstanding there was no rule of the House upon the question, general parliamentary law applied, and he sustained the point of order."

The Vice President sustained Mr. Curtis' first point of order in regard to rule III but did not rule on the point that the motion was dilatory.

Senate Republicans voted 32 to 1 in party conference on May 25 for majority cloture on revenue and appropriation bills.

1925

On March 4, 1925, the Vice President, Charles G. Dawes, delivered his inaugural address to the Senate, in which he recommended that debate be further limited in the Senate.

On March 5, 1925, Senator Underwood introduced the following cloture resolution (S. Res. 3) embodying the Vice President's recommendation on further limitation of debate, which was referred to the Committee on Rules.

"Resolved, That the rules of the Senate be amended by adding thereto, in lieu of the rule adopted by the Senate for the limitation of debate on March 8, 1917, the following:

"1. There shall be a motion for the previous question which, being ordered by a majority of Senators voting, if a quorum be present, shall have the effect to cut off all debate and bring the Senate to a direct vote upon the immediate question or questions on which it has been asked and ordered. The previous question may be asked and ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection. It shall be in order, pending the motion for, or after previous question shall have been ordered on its passage, for the presiding officer to entertain and submit a motion to commit, with or without instruction, to a standing or select committee.

"2. All motions for the previous question shall, before being submitted to the Senate, be seconded by a majority, by tellers if demanded.

"3. When a motion for the previous question has been seconded, it shall be in order, before final vote is taken thereon, for each Senator to debate the proposition to be voted for 1 hour."

Other resolutions introduced in the first session of the 69th Congress limiting debate were Senate Resolution 25; Senate Resolution 225; Senate Resolution 217; Senate Resolution 59; Senate Resolution 77; Senate Resolution 76; which were also referred to the Committee on Rules.

1925

Robinson (Arkansas) said: "No change in the written rules of the Senate is necessary to prevent irrelevant debate. Parliamentary procedures everywhere contemplates that a speaker shall limit his remarks to the subject under consideration. The difficulty grows out of the failure of the presiding officer of the Senate to enforce this rule."

Jones (Washington) proposed a threefold plan of reform: (1) Extend the existing rule which forbids amendments not germane to appropriation bills to general legislation; (2) compel Senators to confine their remarks to the subject under consideration unless permitted by unanimous consent to do otherwise; (3) limit debate on measures other than revenue or appropriation bills after they have been under consideration 10 days and it has been impossible to reach a unanimous consent agreement for their disposal.

Fess and Jones introduced resolutions for a rule of relevancy.

1926

Underwood (Alabama) offered a resolution to limit debate by majority vote to appropriation and revenue bills.

1933

Adoption of 20th amendment (February 6, 1933), by doing away with short sessions, would eliminate filibusters, so Norris believed. But subsequent events demonstrated that filibustering minorities are still able to delay urgent legislation. The final sessions of the 73d and 74th Congresses, the first two to function under the amendment, ended in filibusters.

1935

Chair ruled that a quorum call is the transaction of business and that Senators who yield for that purpose lose the floor. Under this ruling, a speaker yielding twice for quorum calls, if they are in order, while the same question is before the Senate, is unable to regain the floor on that question during the same legislative day.

1939

Reorganization Act of 1939 (Public Law 19, 76th Cong., 1st sess.) limited debate to 10 hours, to be divided equally between those for and against, upon a resolution to disapprove a Presidential reorganization proposal.

1945

The Reorganization Act of 1945 (Public Law 263, 79th Cong., 1st sess.) contained the same "antifilibuster rule" as the Reorganization Act of 1939. This rule reads: "Debate on the resolution shall be limited to not to exceed 10 hours, which shall be equally divided between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order, and it shall not be in order to move to reconsider the vote by which the resolution is agreed to or disagreed to."

1946

Republican steering committee delegated Senator Saltonstall to prepare an amendment to rule 22 "so that the various dilatory methods of preventing its application can be eliminated" (May 21, 1946).

Knowland proposed (S. Res. 312) new standing rule prohibiting the receipt or consideration of any amendment to any bill or resolution which is not germane or relevant to the subject matter thereof. Referred to Rules Committee (July 25, 1946).

Moses urged thorough study of the rules of the Senate "to the end of completely revising them." He also submitted a resolution (S. Res. 314) directing the Parliamentarian of the Senate to "prepare a complete and annotated digest" of its precedents (July 25, 1946). Referred to Rules Committee. (The Parliamentarian is compiling the precedents of the Senate under authority of a similar resolution passed several years ago.)

1947

Saltonstall, Knowland, Morse, and Pepper introduced resolutions to amend Rule 22 so as to make cloture apply to any measure or motion or other matter pending before the Senate by a majority vote of those voting or by a majority vote of the entire membership of the Senate. Rules Committee on April 3, 1947, reported a resolution (S. Res. 25) amending rule 22 by making cloture apply to "any measure, motion, or other matter pending before the Senate or the unfinished business," but making no change in the current voting requirements of rule 22 or in the limitation of debate after cloture is invoked.

Pepper (Florida) revived suggestion that Senate adopt a new rule making irrelevant debate out of order. He also proposed to limit debate on a motion to make any subject the unfinished business of the Senate, to make such a motion privileged, and have it decided by majority vote.

Holland (Florida) suggested that majority cloture be adopted only for the closing day or days of a session and that two-thirds cloture be required at other times.

1948

On July 28 Tobey introduced a resolution (S. Res. 270) "that during the present special session of the Congress, in the interests of efficiency and conservation of time, no Senator shall speak more than once, on any subject, and no more than 30 minutes thereon." No action.

Vandenberg, President pro tem, in sustaining point of order against petition to close debate on motion to consider the antipoll tax bill, expressed his belief that:

"* * * in the final analysis, the Senate has no effective cloture rule at all * * * a small but determined minority can always prevent cloture, under the existing rules * * * a very few Senators have it in their power to prevent Senate action on anything * * * the existing Senate rules regarding cloture do not provide conclusive cloture. They still leave the Senate, rightly or wrongly, at the mercy of unlimited debate ad infinitum" (August 2, 1948).

Republican conference appointed committee of 10 Senators to consider and recommend revision of existing cloture rule (August 1948). Members of this committee were: Brooks (chairman), Wherry, Hickenlooper, Knowland, Lodge, Jenner, Bricker, Ives, Ferguson, Saltonstall.

1949

During the 81st Congress 8 resolutions were introduced to amend the cloture rule, 5 in the 1st session and 3 in the 2d session. Nineteen Senators joined in sponsoring these resolutions: Myers, Morse, Saltonstall, Knowland, Ferguson, Ives, Hayden, Wherry, Pepper, Humphrey, Lehman, Murray, Thomas of Utah, Magnuson, McMahon, Kilgore Neely, Douglas, and Benton. The resolutions were: Senate Resolutions 11, 12, 13, 15, 19, 283, 322, 336. All were referred to the Committee on Rules and Administration which held public hearings on the first 5 resolutions on January 24, 25, 26, 28, 31, and February 1, 1949. After a move to discharge the committee, it reported (Rept. No. 69) without amendment the Hayden-Wherry resolution (S. Res. 15) on February 17. A motion to take up Senate Resolution 15 was considered in the Senate at intervals from February 28 to March 17, 1949, when it was amended and agreed to. On March 10 a motion was presented to close debate on the motion to consider Senate Resolution 15. Mr. Russell made a point of order against the cloture motion which was overruled by the Chair. On appeal from the decision of the Chair, the decision of the Chair was not sustained on March 11 by a vote of 41 to 46.

1950

During the 2d session of the 81st Congress 3 resolutions were introduced to liberalize the cloture rule adopted in 1949. They were Senate Resolution 283, by Mr. Saltonstall, on May 22, 1950; Senate Resolution 322, by Mr. Morse and Mr. Humphrey, on August 2, 1950; and Senate Resolution 336, by Mr. Lehman and 9 others, on August 24, 1950. All these resolutions were referred to the Committee on Rules and Administration, which took no action upon them.

On May 5, 1950, Senator Lucas moved to proceed to the consideration of the FEPC bill (S. 1728). On May 19 a motion to close debate on the motion to take up the FEPC bill was defeated by a vote of 52 yeas to 32 nays. Under the 1949 cloture rule it would have required the votes of 64 Senators—two-thirds of those duly elected and sworn—to close debate. This was the first test of the cloture rule as amended in 1949. Republicans voted 33 for cloture, 6 against. Democrats voted 19 for cloture, 26 against. Twelve Senators were absent, of whom 9 were Democrats and 3 were Republicans. One of the absentees—Senator Withers (Democrat of Kentucky)—was formally announced as opposing application of

cloture. (For discussion of the failure of the new cloture rule on its first try, see Congressional Record, May 19, 1950, pp. 7300-7307.)

On July 12, 1950, a second attempt to invoke cloture on the motion to permit consideration of the FEPC bill (S. 1728) was defeated by a vote of 55 to 33, 9 votes short of the required number. (For further discussion of the pros and cons of the 1949 cloture rule, see Congressional Record, July 12, 1950, pp. 9976-9985.)

1951-52

During the 82d Congress four resolutions to amend the Senate cloture rule were introduced:

Senate Resolution 41, by Mr. Morse and Mr. Humphrey, providing for simple majority cloture;

Senate Resolution 52, by Mr. Ives and Mr. Lodge, providing for constitutional majority (49) cloture;

Senate Resolution 105, by Mr. Lehman and 10 others, providing for simple two-thirds cloture after a waiting period of 48 hours or, alternatively, for simple majority cloture after 15 days of debate; and

Senate Resolution 203, by Mr. Wherry, providing for cloture by two-thirds of those present and voting.

Cloture rule and resolutions compared

Author	Resolution	Voting requirement	Effectiveness in closing debate
Ives-Lodge.....	Rule XXII.....	64 votes.....	3 out of 21 times. ¹
Wherry.....	S. Res. 52.....	49 votes.....	9 out of 21 times. ¹
Morse-Lehman et al.....	S. Res. 203.....	Two-thirds voting.....	4 out of 21 times. ¹
	S. Res. 41 and 105.....	Majority voting.....	14 out of 21 times. ¹

¹ Since 1917.

² Potential effectiveness, had this been the rule since 1917.

These resolutions were referred to the Committee on Rules and Administration which held hearings on them on October 2, 3, 9, and 23, 1951. On March 6, 1952, the committee reported favorably on Senate Resolution 203, with an amendment lengthening the time limit between the filing of a cloture motion and the vote thereon from 1 to 5 intervening calendar days (S. Rept. No. 1256, 82d Cong., 2d sess.).

Senate Resolution 203, if adopted, would restore the voting requirement for cloture which was in effect from 1917 to 1949, i. e., two-thirds of those Senators present and voting instead of two-thirds of those duly chosen and sworn. Senate Resolution 203 leaves subsection 3 of the present rule XXII unaltered, which means that debate would remain unlimited on proposals to change any of the standing rules of the Senate.

Dissenting views were filed by Mr. Lodge who felt that Senate Resolution 203 "will make no practical difference insofar as the prevention of future filibusters is concerned"; by Mr. Hendrickson who urged adoption of a simple majority cloture rule; and by Mr. Benton who favored Senate Resolution 105. No further action was taken on the subject during 1952.

1953-54

During the 83d Congress four resolutions to amend the Senate cloture were introduced:

Senate Resolution 20, by Mr. Jenner, providing for cloture by two-thirds of those present and voting;

Senate Resolution 31, by Mr. Ives, providing for cloture by a majority of the Senate's authorized membership; a 12-day interval (exclusive of Sundays and legal holidays) between the filing of a cloture petition and the vote thereon; and deleting subsection 3 of rule 22 and all reference to it in subsection 2;

Senate Resolution 63, by Mr. Lehman and 7 others, repealing subsection 3 of rule XXII and providing 2 methods of cloture: by two-thirds of those voting after 1 intervening day following filing of the petition, or, if this failed, by a majority of those voting following an interval of 14 days; and

Senate Resolution 291, by Mr. Morse, providing for cloture by a majority of those voting and repealing subsection 3 of rule XXII.

These resolutions were referred to the Committee on Rules and Administration which, after consideration, favorably reported Senate Resolution 20 to the Senate

with an amendment (S. Rept. 268). The resolution was placed on the calendar, but no further action was taken. Senate Resolution 291 was ordered to lie on the table, July 22, 1954. Individual views were filed by Mr. Green and Mr. Hennings (S. Rept. 268). Floor consideration of Senate Resolution 20 was objected to on 4 calendar calls during the 1st session and on 6 calendar calls during the 2d session of the 83d Congress.

The major event of the 83d Congress as regards efforts to limit debate in the Senate was the Anderson motion. At the opening of the 83d Congress advocates of majority rule in the Senate challenged the conception of the Senate as a continuing body. They based their strategy on the contention of Senator Walsh in 1917 that each new Congress brings with it a new Senate, entitled to consider and adopt its own rules. They proposed to move for consideration of new rules on the first day of the session and, upon the adoption of this motion, to propose that all the old rules be adopted with the exception of rule XXII. Rule XXII was to be changed to allow a majority of all Senators (49) to limit debate after 14 days of discussion.

Accordingly, on January 3, 1953, Senator Anderson, on behalf of himself and 18 other Senators, moved that the Senate immediately consider the adoption of rules for the Senate of the 83d Congress. Senator Taft then moved that the Anderson motion be tabled. In the ensuing debate the Anderson motion was supported by Senators Douglas, Humphrey, Lehman, Ives, Hendrickson, Neely, Morse, and Murray.

Senator Douglas told the Senate that the Anderson proposal was the only method with any hope of success. The 1949 rule, he said, "ties our hands once the Senate is fully organized. * * * For under it any later proposal to alter the rules can be filibustered and never permitted to come to a vote * * *. Therefore, if it be permanently decided that the rules of the preceding Senate apply automatically as the new Senate organizes, we may as well say farewell to any chance either for civil rights legislation or needed changes in Senate procedure" (Congressional Record, Jan. 7, 1953, p. 203).

Opponents of the Anderson motion centered principally on the argument that the Senate is a "continuing body," bound by the rules of earlier Senates. They said that this thesis was proved because—

1. Only one-third of the Senate is elected every 2 years.
2. The Constitution did not provide for the adoption of new rules every 2 years.
3. If the Senate had had the power to adopt new rules, it had lost that power through disuse.
4. The Supreme Court, they said, had decided that the Senate was a "continuing body."

Debate against the rules change was led by Senator Taft who announced that the Republican policy committee had voted to oppose it in caucus; and by Senators Russell, Saltonstall, Stennis, Ferguson, Smith (New Jersey), Butler (Maryland), Maybank, and Knowland.

The Anderson motion was finally tabled by a vote of 21 to 70, taken on January 7, 1953. Taft was opposed by 15 Democrats, 5 Republicans and 1 Independent. He was supported by 41 Republicans and 29 Democrats. One additional Democrat was paired against the Taft motion; and one additional Republican was paired for it.

1955-56

During the 84th Congress only one resolution to amend the cloture rule was presented to the Senate. This was Senate Resolution 108, by Mr. Lehman, on June 14, 1955. On that day it was referred to the Committee on Rules and Administration; and on June 29 to the Subcommittee on Rules. No further action was taken on the Lehman resolution. Senate Resolution 108 provided (a) for cloture by a two-thirds vote of those voting "on the following calendar day but one" after the presentation of a petition to close debate; and (b) for cloture by a majority of those voting "on the 14th calendar day thereafter."

OUTSTANDING SENATE FILIBUSTERS FROM 1841 TO 1955

1841—A bill to remove the Senate printers was filibustered against for 10 days.

A bill relating to the Bank of the United States was filibustered for several weeks and caused Clay to introduce his cloture resolution.

1846—The Oregon bill was filibustered for 2 months.

1863—A bill to suspend the writ of habeas corpus was filibustered.

- 1876—An Army appropriation bill was filibustered against for 12 days, forcing the abandonment of a rider which would have suspended existing election laws.
- 1880—A measure to reorganize the Senate was filibustered from March 24 to May 16 by an evenly divided Senate, until two Senators resigned, giving the Democrats a majority.
- 1890—The Blair education bill was filibustered.
The "Force bill," providing for Federal supervision of elections, was successfully filibustered for 29 days. This resulted in the cloture resolution introduced by Senator Aldrich which was also filibustered and the resolution failed.
- 1893—An unsuccessful filibuster lasting 42 days was organized against a bill for the repeal of the Silver Purchase Act.
- 1901—Senator Carter successfully filibustered a river and harbor bill because it failed to include certain additional appropriations.
- 1902—There was a successful filibuster against Tri-State bill proposing to admit Oklahoma, Arizona, and New Mexico to statehood, because the measure did not include all of Indian Territory according to the original boundaries.
- 1903—Senator Tillman (South Carolina) filibustered against a deficiency appropriation bill because it failed to include an item paying his State a war claim. The item was finally replaced in the bill.
- 1907—Senator Stone filibustered against a ship-subsidy bill.
- 1908—Senator La Follette led a filibuster lasting 28 days against the Vreeland-Aldrich emergency currency law. The filibuster finally failed.
- 1911—Senator Owen filibustered a bill proposing to admit New Mexico and Arizona to statehood. The House had accepted New Mexico, but refused Arizona because of her proposed constitution. Senator Owen filibustered against the admission of New Mexico until Arizona was replaced in the measure.
The Canadian reciprocity bill passed the House and failed through a filibuster in the Senate. It passed Congress in an extraordinary session but Canada refused to accept the proposition.
- 1913—A filibuster was made against the omnibus public building bill by Senator Stone of Missouri until certain appropriations for his State were included.
- 1914—Senator Burton (Ohio) filibustered against a rivers and harbors bill for 12 hours.
Senator Gronna filibustered against acceptance of a conference report on an Indian appropriation bill.
In this year also the following bills were debated at great length, but finally passed: Panama Canal tolls bill, 30 days; Federal Trade Commission bill, 30 days; Clayton amendments to the Sherman Act, 21 days; conference report on the Clayton bill, 9 days.
- 1915—A filibuster was organized against President Wilson's ship purchase bill by which German ships in American ports would have been purchased. The filibuster was successful and as a result three important appropriation bills failed.
- 1917—The armed ship bill of President Wilson was successfully filibustered, and caused the defeat of many administration measures. This caused the adoption of the Martin resolution embodying the President's recommendation for a change in the Senate rules, on limitation of debate.
- 1919—A filibuster was successful against an oil and mineral leasing bill, causing the failure of several important appropriation bills and necessitating an extraordinary session of Congress.
- 1921—The emergency tariff bill was filibustered against in January 1921, which led Senator Penrose to present a cloture petition. The cloture petition failed, but the tariff bill finally passed.
- 1922—The Dyer antilynching bill was successfully filibustered against by a group of southern Senators.
- 1923—President Harding's ship-subsidy bill was defeated by a filibuster.
- 1925—Senator Copeland (New York) talked at length against ratification of the Isle of Pines Treaty with Cuba, but the treaty was finally ratified.
- 1926—A 10-day filibuster against the World Court Protocol was ended by a cloture vote of 68 to 26, the second time cloture was adopted by the Senate. A bill for migratory bird refuges was talked to death by States rights advocates in the spring of 1926, a motion for cloture failing by a vote of 46 to 33.

1027. Cloture again failed of adoption in 1927 when it was rejected by 32 yeas against 50 nays as a device to end obstruction against the Swing-Johnson bill for development of the Lower Colorado River Basin.
- One of the fiercest filibusters in recent decades succeeded in March 1927, in preventing an extension of the life of a special campaign investigating committee headed by James A. Reed of Missouri. The committee's exposé of corruption in the 1926 senatorial election victories of Frank L. Smith of Illinois and of William S. Vare in Pennsylvania had aroused the ire of a few Senators who refused to permit the continuance of the investigation despite the wishes of a clear majority of the Senate.
1033. Early in 1933, a 2-week filibuster was staged against the Glass branch banking bill in which Huey Long first participated as a leading figure. "Senators found him impervious to sarcasm and no man could silence him." Cloture was defeated by the margin of a single vote. Finally, the filibuster was abandoned and the bill passed.
1035. The most celebrated of the Long filibusters was staged on June 12-13, 1935. Senator Long spoke for 15½ hours, a feat of physical endurance never before excelled in the Senate, in favor of the Gore amendment to the proposed extension of the National Industrial Recovery Act. But the amendment was finally tabled.
1038. A 20-day "feather duster" filibuster in January-February 1938 defeated passage of a Federal antilynching bill, although an overwhelming majority of the Senate clearly favored the bill.
1039. An extended filibuster against adoption of a monetary bill, extending Presidential authority to alter the value of the dollar, continued from June 20 to July 5, 1939, but finally failed by a narrow margin.
1042. Four organized filibusters upon the perennial question of Federal anti-poll-tax legislation were successful in these years. An attempt to pass
1044. fair-employment-practice legislation in 1946 was also killed by a filibuster. The Senate cloture rule proved ineffective in these cases as a device for breaking filibusters.
1048. A motion to take up a resolution (S. Res. 15) to amend the cloture rule was debated at intervals in the Senate from February 28 to March 17 when it was amended and agreed to.
1049. A motion to take up the FEPC bill (S. 1728) was debated in the Senate, May 8-19, 1950, a total of 9 days. Ten Senators spoke in favor of the motion to take up (really in support of the bill) and 8 Senators spoke against the motion. According to a rough calculation, the proponents of the motion and bill used 35 percent, and the opponents used 65 percent, of the space in the Congressional Record devoted to the subject. During the 9-day period 3,414 inches of the Record were consumed with discussion of FEPC and 2,835 inches with other matters.
- Mr. Malone filibustered for 11 hours against the conference report on the slot-machine bill (S. 3357) in September 1950.
1053. A prolonged debate took place on the so-called tidelands offshore oil bill. It began April 1 and ended May 5. The tidelands debate lasted for 35 days, one of the longest on record. During this debate Senator Morse established a new record for the longest single speech. On April 24-25 he spoke for 22 hours and 20 minutes.
1054. An extended debate occurred in July 1954, on a bill to amend the Atomic Energy Act of 1946 (S. 3690). The debate lasted 13 days. On July 26 Senator Knowland sought to invoke cloture on S. 3690, but his motion failed by a vote of 44 yeas to 42 nays.

Legislation delayed or defeated by filibusters¹

<i>Bills</i>	<i>Year</i>
Reconstruction of Louisiana.....	1865
Repeal of election laws.....	1870
Force bill (Federal elections).....	1890-91
River and harbor bills (3).....	1901, 1903, 1914
Tristate bill.....	1903
Colombian Treaty (Panama Canal).....	1903
Ship subsidy bills (2).....	1907, 1922-23
Canadian reciprocity bill.....	1911
Arizona-New Mexico statehood.....	1911
Ship purchase bill.....	1916
Armed ship resolution.....	1917
Oil and mineral leasing bill and several appropriation bills.....	1919

Legislation delayed or defeated by filibusters¹ Continued

<i>Bills</i>	<i>Year</i>
Antilynch bills (3).....	1922, 1935, 1937-38
Migratory bird bill.....	1920
Campaign investigation resolution.....	1927
Colorado River bills (Boulder Dam project) (2).....	1927, 1928
Emergency officers retirement bill.....	1927
Washington public buildings bill.....	1927
National-origins provisions in immigration laws, resolution to postpone.....	1929
Oil industry investigation.....	1931
Supplemental deficiency bill.....	1935
Work relief bill ("prevailing wage" amendment).....	1935
Flood-control bill.....	1935
Coal conservation bill.....	1936
Anti-poll tax bills (4).....	1942, 1944, 1946, 1948
Fair employment practices bills (2).....	1946, 1950
Numerous appropriation bills. (For a partial list of 82 such bills filed from 1876 to 1916, see Congressional Record, June 28, 1916, pp. 10152-10153.)	

¹ 36 bills appear in this incomplete list, not including the many appropriation bills that have either been lost in the Jan. that resulted from filibusters or were talked to death because they failed to include items that particular Senators desired for the benefit of their States or because grants they made were considered excessive. Several successful filibusters have sought and achieved the enactment of legislation favored by the filibusters. Filibusters have succeeded not only in preventing the passage of legislation, but also in preventing the organization of the Senate, the election of its officers, and the confirmation of Presidential appointees. They have also succeeded in modifying the terms of legislation; in delaying adjournment of Congress; in forcing special sessions, the adoption of conference reports, of neutrality legislation, and of a ship subsidy; in postponing consideration of legislation, and in raising the price of silver. Legislation has also often been defeated or modified by the mere threat of a filibuster. All the bills listed above, however, except the force bill, the armed ship resolution, and the so-called civil rights bills, were eventually enacted, in some form.

Of the 36 measures listed above, all but 11 eventually became law, in some cases after compromises had been made in their provisions following the failure of cloture. The table below, prepared at the direction of Senator Hayden, shows the later action on 35 filibustered bills.

The 36th measure (the second FEPC bill) was filibustered in 1950, subsequent to the table that follows.

Later action on 35 filibustered bills

<i>Bills</i>	<i>Filibustered</i>	<i>Passed</i>	<i>Not passed (10)</i>
Reconstruction of Louisiana.....	1865.....	1868.....	
Election laws.....	1879.....	1909 (repealed).....	
Force bill.....	1890-91.....		X
River and harbor bills (3).....	1901, 1903, 1914.....	At intervals.....	
Tristate bill.....	1903.....	1907, 1912.....	
Columbian Treaty.....	1903.....	1903.....	
Ship subsidy bills (2).....	1907, 1922-23.....	1936.....	
Canadian reciprocity bill.....	1911.....	1911.....	
Arizona-New Mexico statehood.....	1911.....	1912 (admitted).....	
Ship purchase bill.....	1915.....	1916.....	
Armed ship bill.....	1917.....		X
Mineral lands leasing bill.....	1919.....	1920.....	
Antilynch bills (3).....	1922, 1935, 1937.....		X
Migratory bird conservation bill.....	1926.....	1929.....	
Campaign investigation resolution.....	1927.....	1927.....	
Colorado River bills (2).....	1927, 1928.....	1928.....	
Emergency officers retirement bill.....	1927.....	1928.....	
Washington public buildings bill.....	1927.....	1928.....	
Resolution to postpone national-origins provision of immigration laws.....	1929.....	1929.....	
Oil industry investigation.....	1931.....	1935.....	
Supplemental deficiency bill.....	1935.....	1936.....	
Prevailing wage amendment to work relief bill.....	1935.....	1936.....	
Flood-control bill.....	1935.....	1936.....	
Coal conservation bill.....	1936.....	1937.....	
Anti-poll-tax bills (4).....	1942, 1944, 1946, 1948.....		X
FEPC bill.....	1946.....		X

¹ In special or subsequent sessions.

NOTE.—Numerous appropriation bills—at intervals—passed in special or later sessions.

SOURCE: Limitation on Debate in the Senate. Hearings before the Committee on Rules and Administration, U. S. Senate, 81st Cong., 1st sess. On resolutions relative to amending Senate rule XXII relating to cloture. January and February 1949, p. 42.

Senate votes on invoking cloture rule¹

Congress session, and date	Subject	Senator offering motion	Yeas	Nays	Congressional Record, volume, page	Cloture
66th, 1st, Nov. 15, 1919.	Treaty of Versailles.....	Lodge	78	16	68-8555-56 ..	Yes.
66th, 3d, Feb. 2, 1921.	Emergency tariff	Penrose.....	36	35	60-2432	No.
67th, 2d, July 7, 1922.	Fordney-McCumber tariff....	McCumber ..	45	35	62-10010	No.
69th, 1st: Jan. 25, 1926.....	World Court	Lenroot	68	26	67-2078-70 ..	Yes.
June 1, 1926.....	Migratory-bird refuges.....	Norbeck.....	46	33	67-10392	No.
69th, 2d: Feb. 15, 1927.....	Branch banking	Pepper.....	65	18	68-3824	Yes.
Feb. 26, 1927.....	Retirement of disabled emergency officers of the World War.	Tyson	51	30	68-4901	No.
Do	Colorado River development.	Johnson.....	32	50	68-4900	No.
Feb. 28, 1927.....	Public buildings in the District of Columbia.	Lenroot	52	31	68-4985	No.
Do.....	Creation of Bureau of Customs and Bureau of Prohibition.	Jones (Washington).....	55	27	68-4980.....	Yes.
72d, 2d, Jan. 19, 1933.	Banking Act.....	Robinson.....	58	30	70-2077.....	No.
75th, 3d: Jan. 27, 1938.....	Antilynching	Neely	37	51	83-1106.....	No.
Feb. 16, 1938.....	do	Wagner.....	42	46	83-2077.....	No.
77th, 2d, Nov. 23, 1942.	Antipoll tax	Barkley.....	37	41	88-905.....	No.
78th, 2d, May 15, 1944.	do	do	36	44	90-2550-51 ..	No.
79th, 2d: Feb. 9, 1946.....	Fair Employment Practices Commission.	do	48	36	92-1219.....	No.
May 7, 1946.....	British loan	Ball	41	41	92-4530.....	No.
May 25, 1946.....	Labor disputes	Knowland.....	3	77	92-5714.....	No.
July 31, 1946.....	Antipoll tax	Barkley.....	39	33	92-10512.....	No.
81st, 2d: May 19, 1950.....	Fair Employment Practices Commission.	Lucas.....	53	32	96-7300.....	No.
July 12, 1950.....	do	do	55	33	96-0882.....	No.
83d, 2d, July 26, 1954.	Atomic Energy Act.....	Knowland.....	44	42	100-11942.....	No.

¹ Many cloture petitions have also been withdrawn or held out of order since 1917.

ARGUMENTS FOR FILIBUSTERING

1. Minorities have rights which no majority should override. Government is constituted to protect minorities against majorities. Obstruction is justifiable as a means of preventing a majority from trampling upon minority rights until a broad political consensus has developed.

2. A Senate majority does not necessarily represent a consensus of the people or even of the States. Frequently popular opinion upon a question has not been formulated or, if it has been, it is often not effectively expressed. Prolonged debate may prevent hasty majority action which would be out of harmony with genuine popular consensus.

3. It is the special duty of the Senate, sitting in an appellate capacity, carefully to inspect proposed legislation, a duty not readily performed without freedom of debate. In our system of government, where legislation can be gavelled through the House of Representatives at breakneck speed with only scanty debate under special rules framed by a partisan committee, it is essential that one place be left for thorough-going debate.

4. Filibusters really do not prevent needed legislation, because every important measure defeated by filibuster has been enacted later, except the civil rights bills. No really meritorious measure has been permanently defeated and some vicious proposals have been killed. The filibuster has killed more bad bills than good ones.

5. It is the unique function of the Senate to act as a check upon the executive, a responsibility it could not perform without full freedom of debate. Unrestricted debate in the Senate is the only check upon presidential and party autocracy. It is justified by the nature of our governmental system of separated powers.

6. The constitutional requirement for recording the yeas and nays is a protection of dilatory tactics. The provision of the Constitution which requires the yeas

and nays to be recorded in the Journal at the desire of one-fifth of the Members present in an intentional safeguard allowing the minority to delay proceedings.

7. Majority cloture in the Senate would destroy its deliberative function and make it a mere annex of the House of Representatives.

8. Simple majority cloture would have brought many a decision which would have accorded ill with the sober second thought of the American people.

9. The Senate, without majority cloture, actually passes a larger percentage of bills introduced in that body than does the House of Representatives, with cloture.

10. To enforce cloture by vote of a chance majority in the Senate might bring greater loss than gain.

11. Filibusters are justifiable whenever a great, vital, fundamental, constitutional question is presented and a majority is trying to override the organic law of the United States. Under such circumstances, Senators as ambassadors of the States in Congress have a duty to protect the rights of the States.

ARGUMENTS AGAINST FILIBUSTERING

1. Under the practice of filibustering, the basic American principle of majority rule is set at naught. Not only is the majority thwarted in its purpose to enact public measures, it is also coerced into acceptance of measures for which it has no desire or approval.

2. The Senate should legislate efficiently, with responsibility only to the people. If the Senate is to be efficient, time should not be wasted in unnecessary delay merely for the sake of obstruction. Filibusters sometimes make special sessions of Congress imperative, with resulting unnecessary expense to the people and business uncertainty in the country. They also destroy responsibility of the majority party to the people.

3. Experience abroad and in the State legislatures indicates that debate can be limited without undemocratic results.

4. The constitutional provision that "the yeas and nays of the Members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal" requires an immediate vote when the yeas and nays have been properly demanded.

5. Filibustering gives one Senator or a little group of Senators a veto power. It enables a handful of men in the Senate to prevent the passage of legislation desired by the overwhelming majority of the Members of Congress and the country. It permits one Senator to hold up needed appropriations until he extorts the favor that he demands for his State.

6. Filibusters have delayed for decades the enactment of social legislation passed by the House of Representatives and desired by a majority of the American people. Many people are losing faith in American democracy because of its repeated and prolonged failures to perform its implicit promises. Responsibility for these failures lies in large part at the door of Senate filibusters.

7. They arouse popular resentment and bring the Senate into disrepute at home and abroad.

8. Filibusters cost the taxpayers thousands of dollars, consuming days and weeks of valuable time and many pages of the Congressional Record at \$80 a page.

9. They impose upon the Senate an indignity which would not be tolerated in any other legislative chamber in the world.

10. The present cloture rule (rule XXII) is so cumbersome as to be unworkable. It has been successfully invoked only 4 out of 22 times in 39 years, the last time being in 1927.

11. Free speech would not be abolished in the Senate by majority cloture because, under the proposed amendment, adequate opportunity to deliberate upon a measure would be afforded during the proposition stage plus the 2-day interval between the presentation of the cloture petition and the vote upon it, plus the 96 potential hours of debate allowed after cloture has been invoked.

12. Scores of appropriation bills and much meritorious legislation have been defeated or delayed by filibusters in the past.

13. Filibusters are undemocratic in that they permit one-third of the Senators present, plus one, to obstruct the majority. This group of Senators may be from only one section of the country, they may be from only one political party, and none of them may have been recently elected. It is a dubious argument to defend the filibuster on the ground that it protects the minority when actually its principal use, actual or potential, is to deny fundamental democratic rights to certain minorities. Most of the really undemocratic conditions in our country today exist because of the threat or use of the filibuster.

14. An effective antifilibuster rule ought to exist because (a) it is the imperative duty of a legislature not merely to debate but to legislate and, therefore, to tolerate no course of action by any of its members which will absolutely prevent legislation; (b) the majority is and must be held responsible for the conduct of affairs and is, therefore, entitled to use all means proper and necessary for the conduct of affairs; and (c) the vast and steadily increasing volume of business thrust on Congress renders it essential that not one moment of time be consumed uselessly.

REMEDIES FOR OBSTRUCTION IN THE SENATE¹

1. Amend rule XXII to provide for cloture by majority vote of the total membership of the Senate, or by a majority of those present, applicable to any motion, measure, or other matter pending, after unlimited debate for a specified minimum number of days.

2. Adopt a rule providing for use of the motion for the previous question (as the House does) by which all further debate upon a matter may be terminated by a majority vote of the Chamber.

3. Adopt a rule that debate and amendments must be germane to the subject under consideration.

4. Limit duration of debate on bills by special orders as the House does.

5. Enforce the existing rules of the Senate by --

(a) Requiring the speaker to stand and not to sit or walk about.

(b) Taking a Senator "off his feet" for using unparliamentary language.

(c) Making a point of order against frequent quorum calls that no business has intervened since a rollcall disclosed the presence of a quorum.

(d) The Chair making drastic rulings against dilatory motions, on points of order raised from the floor.

(e) Objecting to reading a paper (rule XI).

6. Enforce rule XIX that "no Senator shall speak more than twice upon any one question in debate on the same day without leave of the Senate, which shall be determined without debate."

7. Enforce the provision of Jefferson's Manual that "No one is to speak impertinently or beside the question, superfluously, or tediously."

8. Let the Chair reverse the precedent, established in 1872, that a Senator cannot be called to order for irrelevancy in debate.

9. Let the Chair make a wise use of the power of recognition as between simultaneous claimants (rule XIX, clause 1).

10. Let there be objection to yielding the floor, even though the Senator who has the floor consents to an interruption.

11. Resort to prolonged or continuous sessions.

LIMITATION OF DEBATE IN THE HOUSE OF REPRESENTATIVES

1. Debate in the House of Representatives is prohibited on a large number of parliamentary motions. Cannon lists 30 questions and motions which are not debatable at pages 143-44 of his *Procedure in the House of Representatives*, fourth edition.

2. General limitations:

(a) Since 1780 no Member has been allowed to speak more than once to the same question without leave of the House unless he be the mover, proposer, or introducer of the matter pending (rule XIV, clause 6).

(b) Since 1841 no Member has been allowed to occupy more than 1 hour in debate on any question in the House or in Committee of the Whole (rule XIV, clause 2).

(c) Since 1780 it has been possible to shut off debate and bring the matter under consideration to an immediate vote by the motion for the previous question (rule XVII).

(d) Since 1780 Members engaging in debate have been required to confine themselves to the question under consideration, except during general debate in the Committee of the Whole on the State of the Union (rule XIV, clause 1).

(e) Since 1780 no Member has been permitted to take the floor or engage in debate until he has been recognized by the Chair (rule XIV, clause 2).

(f) Since 1883 time general debate for in Committee of the Whole has been limited by special orders reported by the Committee on Rules and adopted by the House (rule XXIII, clause 5).

¹ As proposed by United States Senators from time to time through the years.

(g) Since 1847 and 1850 debate upon amendments to a pending bill has been limited by the 5-minute rule (rule XXIII, clause 5).

(h) Since 1880 debate has been limited to 40 minutes under suspension of the rules (rule XXVII).

EXHIBIT 2

WRITTEN STATEMENTS OF ORGANIZATIONS AND INDIVIDUALS

In response to letters similar to that sent to former Vice President John Nance Garner (see exhibit 3, p. 360) the subcommittee has received the following statements from organizations and individuals:

AMERICAN ASSOCIATION OF SMALL BUSINESS,
New Orleans, La., May 27, 1957.

Senator HERMAN E. TALMADGE,
Senate Office Building,
Washington, D. C.

DEAR SENATOR TALMADGE: Thank you for your recent communication regarding the proposal to take testimony before the Special Subcommittee on Rules and Administration, regarding a change in Senate rule 22, relating to limitation of debate.

I believe that the United States Senate is the best legislative body in the world, and in all probability, recorded history. Therefore, I can say at this time that the AASBI is opposed to any change in rule 22, which will limit debate in any way.

Please have a copy of Senate rule 22 mailed to me at your earliest convenience. I look forward to the pleasure of hearing from you promptly.

Yours for keeping small business in business,

Very sincerely,

J. D. HENDERSON.

AMERICAN CONSTITUTION PARTY OF IOWA,
STATE HEADQUARTERS,
Davenport, Iowa, May 14, 1957.

Re Senate rule XXII.

Senator HERMAN E. TALMADGE,
United States Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: It is important to our personal, State, and national freedom that no gag rule be placed on debate in the United States Senate.

The tongues of the majority of the people of our Republic must not be tied by the threats nor the cajoleries of selfish minorities. Individual rights and States' rights must again be recognized as valid if our constitutional Government is to endure.

Our elected legislators must speak for us, and we must have the right guaranteed to us by our United States Constitution - freedom of speech.

We urge you: Oppose any and all changes to Senate rule XXII which would limit debate.

Very sincerely yours,

GWEN PATTON INMAN,
Mrs. Gerald O. Inman,
American Constitution Party of Iowa.

AMERICAN COUNCIL OF CHRISTIAN LAYMEN,
Madison, Wis., May 11, 1957.

Hon. HERMAN E. TALMADGE,
Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: We are in receipt of your letter of May 10 asking an expression regarding proposals to set limits on debate in the United States Senate.

I believe it is not feasible for us to send a spokesman to a public hearing on this matter. Our directors are widely scattered and none of them are in the immediate vicinity of the National Capital. I personally feel that we can spend the money to better advantage in the course of our work for libertarian principles than by sending a spokesman a long distance to a Washington hearing.

However, I am happy to make a statement on my own behalf, with assurance that I know the members of our board will go along with my statement, which is as follows:

I consider that unlimited debate in the United States Senate is a valuable safeguard to American liberty. It can and often does stand as a protection from rough overriding of the wishes of an apparent minority which often actually represents the will of the majority. But even when it no more than protects a minority group, it serves a useful purpose. All too often a heedless majority sets out to accomplish aims and purposes which are unjust, cruel and actually unconstitutional.

The odd thing about this clamor for limiting debate is that it comes from groups who in the past have been the loudest in their praise of men who have blocked legislation by using the right of unlimited debate.

The late Robert M. LaFollette, recently named as one of the five great Senators, won nationwide, even worldwide acclaim for his ventures in filibustering, and if memory serves correctly Senator Wayne Morse set a new filibuster record not too many months ago and was widely acclaimed by those who now wish to limit debate. It all depends on which side is in power.

Just now the superduper liberals, proponents of fake civil-rights legislation and unlimited globalism feel that with debate limitations they could force through their unholy schemes. Therefore, at this time they are in favor of debate limitation.

But should there be a change in the complexion of the Congress, should the conservatives come to be in the majority and threaten to pass truly liberal legislation, these same liberals now favoring debate limitation would be screaming for restoration of the limitation for the protection of the rights of minorities.

And they would be right. As I read and understand the Constitution of the United States, a principal reason for the drafting and adoption of the Constitution was to establish a government of law rather than a government solely by majority vote regardless of whether or not the majority was seeking to proceed by constitutional methods.

You may be sure that all fundamentalist Christians who have thought through these issues are opposed to destroying that last bulwark of liberty, the right of unlimited debate.

With all best wishes,

Cordially and sincerely,

VERNE P. KAUB, *President,*
American Council of Christian Laymen.

AMERICAN FLAG ASSOCIATION
OF THE UNITED STATES OF AMERICA,
Tampa, Fla., June 7, 1957.

HON. HERMAN E. TALMADGE,
United States Senate, Washington, D. C.

DEAR SENATOR TALMADGE: Replying to your good letter of May 16, and speaking for the American Flag Association of the United States, I wish to state that we disapprove of the changes proposed for Senate rule XXII relating to limitation of debate. We believe in free debate.

Please assure your committee that our association will support you in your efforts regarding this matter.

Patriotically yours,

Mrs. EDGAR S. BLOCK,
Secretary, American Flag Association of the United States.

THE AMERICAN LEGION,
SAULS-BRIDGES POST No. 13,
Tallahassee, Fla., May 21, 1957.

Senator HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: We are writing to voice our support for Senate rule No. 22 as it now stands. We feel that all matters before the Senate should be subject to free and open debate and any change in the present filibuster rule will not guarantee this condition.

We hope that you and other Senators throughout our country will be successful in forestalling any change in this rule.

Very truly yours,

H. B. FRANKLIN, *Commander*,
R. M. DICKINSON, *Commander-elect*.

AMVETS ON THE AIR, THE VETERANS' VOICE OF AMERICA, INC.,
Atlantic, Iowa, June 8, 1957.

SPECIAL SUBCOMMITTEE, SENATE COMMITTEE ON RULES AND ADMINISTRATION,
Senate Office Building, Washington, D. C.

DEAR SIR: This is to register vigorous protest against any proposal to limit debate in the United States Senate. This is one of the most dangerous proposals ever to be introduced in this country. There are seven such proposals now pending. If debate is limited that means that the liberals and one-worlders will be able to "ram through" anything they want and stifle opposition.

Yours very truly,

CLYDE M. LONGSTRETH, *President*.

CITIZENS UNITED, INC.,
Los Angeles, Calif., May 30, 1957.

Hon. HERMAN E. TALMADGE,
Subcommittee Member, Senate Committee on Rules and Administration.

HONORABLE GENTLEMEN OF THE UNITED STATES SENATE: We look with disfavor to making any change in Senate rule 22. This rule has served a good purpose since its enactment in preventing indiscreet legislation which sometimes creeps into enactment.

We feel that this movement to change this rule is motivated by ulterior pressure of such nature as to affect civil-rights legislation which we consider dangerous to national and individual sovereignty.

You, Gentlemen, must remember that, in this land of freedom, the court of public opinion occupies a pedestal far above the bench of the executive, the judicial and the legislative branches of Government. This fact was wisely established by the framers of our Constitution.

No Executive decree, no court decision, no act of Congress can long withstand the angry pressure of adverse public opinion.

Let us be bound by the provisions of the Constitution.

Sincerely yours,

W. R. BEATTY, *President*

CONSTITUTIONAL ACTION, INC.,
Seattle, Wash., June 10, 1957.

SPECIAL SUBCOMMITTEE, SENATE COMMITTEE ON RULES AND ADMINISTRATION,
United States Senate Office Building, Washington, D. C.

Gentlemen: It has been called to our attention that several proposals are now pending relative to the limiting of debate.

I represent an organization with a membership running into four figures, and it is the unanimous opinion of our board of trustees that if these proposals to limit debate should become a fixed rule in the United States Senate, you would be guilty of stifling the will of the people of the United States.

We trust that you will do everything in your power to defeat these proposals.

Ever sincerely,

MARTIN G. JOHANSON, *Secretary-Treasurer*.

DEFENDERS OF AMERICAN EDUCATION,
Tucson, Ariz., May 20, 1957.

Senator HERMAN E. TALMADGE,
Committee on Rules and Administration,
United States Senate, Washington, D. C.

DEAR SENATOR TALMADGE: In reply to your letter of May 11, 1957, outlining the plan of the special subcommittee to take testimony on seven proposals pending before it to change Senate rule XXII relating to limitation of debate, I assure you wholeheartedly, full cooperation and will give whatever information and assistance necessary.

We cannot allow the existing rule to be changed in any way which would restrict, restrain, or deny the freedom guaranteed all Americans by the Founding Fathers as set down in the Constitution of the United States of America.

Too, too many of our fundamental freedoms have been taken from us by "legal" and legislative procedures.

Due to limited finances, the participation of the DAE will have to be with resolutions and individual letters.

Indeed, count on us to help you and other American Congressmen who are true to their oath of office to defend the Constitution of the United States of America. No real patriot will ever suggest a change in rule XXII which might curb or even prohibit free speech and debate in our land.

With appreciation for your service to our country and grateful for the opportunity to serve it by working with you, I am,

Very sincerely,

EMMA M. McLAUGHLIN, *Chairman.*

DESCENDANTS OF THE SIGNERS OF THE DECLARATION OF INDEPENDENCE,
White Plains, N. Y., May 23, 1957.

Hon. HERMAN E. TALMADGE,
United States Senate,
Washington, D. C.

DEAR SENATOR TALMADGE: Your letter of May 16 in reference to the seven pending proposals to change Senate rule XXII has been referred to my attention.

Under the terms of incorporation of this society, it is bound not to participate in anything which might be construed as political activity.

The question involved is an highly controversial one with decidedly political overtones, hence it is felt this organization should take no official stand.

This is not to say, of course, that the members may not speak for themselves, and in this capacity I wish to put myself on record as being strongly opposed to any limitations on debate.

Thanking you for calling this important issue to the notice of the membership, and with all good wishes, I am,

Sincerely,

PERCY HAMILTON GOODSELL, Jr.
President General.

RESOLUTION PASSED BY THE BOARD OF DIRECTORS, FLORIDA STATES RIGHTS, INC.

At a meeting of the board of directors, of Florida States Rights, Inc., held May 27, 1957, it was unanimously resolved that the board of directors of the Florida States Rights, Inc., vehemently oppose any changes proposed in Senate rule XXII of the United States Senate, and that this resolution be and is the unanimous opinion of the said Florida States Rights organization, and copy of this resolution be sent to Senator Herman E. Talmadge on the Committee on Rules and Administration.

J. H. KEATHLEY, *President.*

MASSACHUSETTS COMMITTEES OF CORRESPONDENCE,
South Braintree, Mass., May 19, 1957.

Hon. HERMAN E. TALMADGE,
Senate Office Building,
Washington, D. C.

DEAR SENATOR TALMADGE: Thank you for your May 11 letter asking for an expression of my views on the question of free debate in the Senate. This letter

was addressed to me as head of the Massachusetts Committees of Correspondence.

May I say that I, a firm believer in constitutional government and States rights, consider freedom of debate an absolute necessity if we are to maintain a truly representative Republic. I definitely am opposed to any limitation of debate now or in the future, and this is also the viewpoint of members I have polled.

We intend to keep fighting for God and country and America's children and thank you for your courageous support. May God guide you and give you the needed strength in the days ahead.

Very sincerely yours,

Mrs. GWEN M. SCHOFIELD.

GEORGIA STATE SOCIETY,
SONS OF THE AMERICAN REVOLUTION,
Atlanta, Ga.

To: United States Senate.

From: P. C. King, Jr., president, Georgia State Society, Sons of the American Revolution.

Subject: Testimony for forthcoming hearings on the proposed changes of the United States Senate rule XXII pertaining to free debate.

One of the cardinal virtues of the government of all English speaking people is free debate. The British Parliament and the United States Congress in both the House of Representatives and the United States Senate allow free debate because history taught all English-speaking people the dangers of limiting debate.

I am sure that the "Star Chambers Sessions" of England many centuries ago furnished one of the arguments for not only free debate but an open forum. The avarice and oppression of King John probably furnished another for when he signed the Magna Carta at Runnymede in 1215 English-speaking people would enjoy more rights than ever before including free debate in Parliament. For after this great document was signed men like William Pitt the elder spoke in the House of Commons January 10, 1776 on the right to tax America in part as follows: "Gentlemen, sir, have been charged with giving birth to sedition in America. They have spoken their sentiments with freedom against this unhappy act, and that freedom has become their crime. Sorry I am to hear that liberty of speech in this house imputed as a crime. But the imputation shall not discourage me. It is a liberty I mean to exercise. No gentleman ought to be afraid to exercise it. It is liberty by which the gentleman who calumniates it might have profited." And further that "no subject of England shall be taxed save by his own consent." The celebrated speeches of Chatham, Burke, and Erskine are masterpieces of English oratory and none of them would have been possible under rules of limited debate for they are generally long and detailed. I refer to a book entitled "Masterpieces of English Oratory" published by Porter & Coates as authority for this statement.

Some Senators may argue the Senate is not concerned with history. But a Senator once said "a page of history is worth 100 pages of law." It is necessary to turn back the clock and examine a few pages of history in order to understand our Government. It was wrought by the blood, sweat and sacrifice of our founding fathers, they did not have time for tears. It was created by free debate. I will recite examples and fact as proof. Patrick Henry inspired the Americans with his speech at the second Virginia Convention in Richmond, on March 20, 1775, for it was here that he asserted, "I know not what course others may take; but as for me, give me liberty or give me death."

The Declaration of Independence signed July 4, 1776, was not written in a day, but after many days of debate. There was no limited debate. The men who signed it pledged their lives, fortunes, and sacred honor. Some of them lost their lives, some had their property confiscated but none of them lost their sacred honor for their names are enshrined in American history as patriots of the first order. I doubt if many would have signed if debate had been limited and doubt if that great declaration would have become a reality if it had been railroaded by one group against the interest of another.

There were several conventions before the Constitution of the United States was adopted among them a convention at Annapolis, Md., where many things were discussed including term of office of president. The Constitution was adopted at a convention at Philadelphia, Pa., September 17, 1787, after much free debate as to term of office of a president, selection of Senators and Members of Congress. Washington was offered power as a king or a dictator and it is

to his credit that he declined both. He had the good judgment to call on his friend and neighbor, George Mason of Gunston Hall who had written the constitution of Virginia and other States to draft a constitution that was patterned after the State constitution of Virginia except that he said it "contained no declaration of rights." Because he pointed out this defect in a free debate and many of the members of the constitutional convention were members of Congress 2 years later Congress adopted the Bill of Rights. Mason may be the most forgotten man of all history but he was the first man in the history of America to advocate by dignity of law freedom of speech, press, and the other freedoms in the Bill of Rights. Patrick Henry said of Mason, "he is the greatest statesman I have ever known."

But let us pass on to the golden era of American oratory when freedom of debate was not questioned. Henry Clay's speech on the Missouri compromise or on taking up his compromise resolutions on the subject of slavery could not have been delivered had there been limited debate. John C. Calhoun's speech delivered December 27, 1837, on States rights could not have been delivered had there been limited debate, and it should be read into the Senate records at this hearing to remind Congress again the States do have rights under the Constitution and under the Bill of Rights which was actually a bill of reservations for it reserved some rights for the States. Last but not least is the celebrated speech of Daniel Webster on the Constitution and the Union of March 7, 1850, to the United States Senate. Webster actually agreed with Calhoun that the States did have rights and he did speak as he said "not as a Massachusetts man, nor a Northern man, but as an American, and a Member of the Senate of the United States." The speech is about 40 pages long but it averted war. Under a rule of limited debate Daniel Webster could not have delivered this speech or many other speeches he delivered to the United States Senate for some of them were longer. I am reliably informed by the press and television that at long last Henry Clay, John C. Calhoun, and Daniel Webster will be honored by the United States Senate by having their portraits placed in the United States Senate. If the United States Senate had limited debate when they served in the Senate it is most questionable if they could have accomplished so much and also doubtful if the Senate would honor them even now.

I am reliably informed that the Senators who wish to railroad a misnamed civil-rights bill want to change Senate rules and abolish free debate. The very abolition of free debate could and would violate the civil rights of every American for free debate has been the safeguard of their liberty.

The Constitution and Bill of Rights have served as the golden keys of good government in this country since it was created and guaranteed all the civil rights a citizen could ask for. Our Constitution has been changed by amendments some of which were adopted during an era when many Southern States had no representation in Congress and did not vote to ratify them by any representative group of Southerners and are just as questionable as some of the tax acts England imposed on us to cause our war with England. But in no part of the Constitution or any of its amendments is psychology or sociology an integral part of the great document. All of the history I read indicates freedom of choice was a reason this country was settled and one of the main principles our Founding Fathers had in mind when the Constitution was written.

President Franklin D. Roosevelt said of our Bill of Rights on December 15, 1941:

"No date in the long history of freedom means more to liberty-loving men in all liberty-loving countries than the 15th day of December 1791. On that day, 150 years ago, a new nation, through an elected Congress, adopted a declaration of human rights which has influenced the thinking of all mankind from one end of the world to the other.

"There is not a single republic in this hemisphere which has not adopted in its fundamental law the basic principles of freedom of man and freedom of mind enacted in the American Bill of Rights.

"There is not a country, large or small, on this continent which has not felt the influence of that document, directly or indirectly."

What we face is nothing more nor less than an attempt to overthrow and to cancel out the great upsurge of human liberty of which the American Bill of Rights is the fundamental document. Some of our prodigal political sons of the 20th century like the one of old have gone into a foreign country and like the Biblical character wasted their inheritance and want to waste ours. Such a character was Alger Hiss who according to a recent article in the American Legion magazine tried to place the Panama Canal under the United Nations. Let us cast out this foreign idolatry and fill the vacuum with a reverence for the spiritual

truths, an undying patriotism for our country, and a profound respect for the wisdom and accomplishments of our Founding Fathers, who left us a legacy in the Constitution and Bill of Rights that should be properly and wisely administered.

Of course we all know this legacy should be administered by our courts and particularly the United States Supreme Court. As to this duty I can quote no better authority than Thomas Jefferson, a patriot, a President, a student of American Government, and a wise man. Thomas Jefferson said:

"It is not enough that honest men are appointed judges. All know the influence of interest on the mind of men, and how unconsciously his judgment is warped by that influence. To this bias add that of the esprit de corps, of their peculiar maxim and creed, that 'it is the office of a good judge to enlarge his jurisdiction,' and the absence of responsibility; and how much can we expect in impartial decision between the general Government, of which they are themselves so eminent a part, and an individual State, from which they have nothing to hope or fear? We have seen too, that, contrary to all correct example, they are in the habit of going out of the question before them, to throw an anchor ahead, and grapple further hold for future advances of power. They are then, in fact, the corps of sappers and miners, steadily working to undermine the independent rights of the States, and to consolidate all power in the hands of that Government in which they have so important a freehold estate. But it is not by the consolidation or concentration of powers, but by their distribution, that good government is effected. Were not this great country already divided into States, that division must be made, that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority. Every State again is divided into counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details; and every ward into farms, to be governed, each by its individual proprietor. Were we directed from Washington when to sow, and when to reap, we should soon want bread. It is by this partition of cares, descending in gradation from general to particular, that the mass of human affairs may be best managed, for the good and prosperity of all. I repeat that I do not charge the judges with willful and ill-intentioned error; but honest error must be arrested, where its toleration leads to public ruin. As for the safety of society, we commit honest maniacs to bedlam, so judges should be withdrawn from their bench, whose erroneous biases are leading us to dissolution. It may, indeed, injure them in fame or in fortune; but it saves the Republic, which is the first and supreme law."

The above quotation from the memoirs of Thomas Jefferson is most prophetic. Jefferson opposed a United States Supreme Court Justice holding office for life and advocated their removal and correctly predicted that if ever constitutional government were destroyed it would be a United States Supreme Court exceeding its authority and trying to legislate by enlarging their jurisdiction.

Over a century ago when Georgia prosecuted some criminals in its borders the Supreme Court made the mistake of ruling it could not prosecute. Andrew Jackson, President of the United States said of that decision, "John Marshall wrote that decision; let's see him enforce it". A resolution was introduced in the General Assembly of Georgia reading in part as follows: "The Supreme Court has trampled on the Constitution". The criminal was hung as sentenced by the courts of Georgia. Both Congress and Georgia enacted laws and the Cherokee Indian was removed from the State of Georgia to reservations. If Andrew Jackson had been in the White House instead of Abraham Lincoln, who was elected by a minority of the votes cast in 1860, Jackson would have removed the race problem for all time by removing the Negroes to a reservation.

My great Uncle, Governor George W. Towns, the son of Lieutenant John Towns, who served in the Battle of Cowpens and Eutaw Springs and other engagements was author of Georgia's inscription reads as follows: "The Constitution as it is, the Union as it was". These words carved on the Washington Monument express the position of Georgia and the Nation, then, and now. We have an unquestioned allegiance to the Constitution largely written by southern men and clung to by southern people but we have a general attitude of opposition to the court trying to legislate and we take no oath to the United States Supreme Court as citizens but to the United States Constitution.

Our Founding Fathers set up a system of checks and balances in creating the legislative, executive and judicial branches of Government. Only the States and Congress are given any authority to legislate. I am sure that the delegates who adopted the Constitution and Congress who adopted the Bill of Rights 2 years later would wince at the brazen attempts of legislating on the part of the

United States Supreme Court. Their proposals of forced integration violates the most fundamental principles of our Constitution and all of the principles advocated by our Founding Fathers for it abolishes freedom of choice in America the very thing this country was created for.

A proposed civil rights bill patterned after a United Nations proposal will strip the citizens of this country of many of the civil rights granted them under the Constitution and Bill of Rights. It will most assuredly destroy freedom in American homes, schools, churches, clubs, civic groups, employment, and rights of every American citizen. Do you want to sell our American birthright for a mess of political porridge? Surely there are enough patriotic Senators to defeat this unholy bill that will violate all laws, our Constitution and all American tradition. Time has not changed the meaning of the Constitution or the Bill of Rights any more than time has changed the meaning of the Holy Bible. Time has only proven the truth of both the Bible and our Constitution. With free and unlimited debate these vital issues may be discussed, without free and unlimited debate they cannot.

GOODRODY & Co.,
Chicago, Ill., June 10, 1957.

SPECIAL SUBCOMMITTEE OF THE SENATE COMMITTEE
ON RULES AND ADMINISTRATION,
United States Senate Office Building,
Washington, D. C.

GENTLEMEN: I, and all my associates, vigorously oppose any proposal to limit debate in the United States Senate and I can back this up with hundreds of signed petitions.

Very sincerely yours,

PHILIP F. HEINTZ,
Evanston, Ill.

INDIVIDUALS FOR FREEDOM,
Summit, Miss., June 8, 1957.

DEAR SENATOR TALMADGE: Unfortunately, the large size of our membership and the widely scattered addresses preclude our contacting each member individually. But we can undertake to speak for them almost without hesitation.

It is unthinkable that such a question should have arisen in the Senate but those of us who are familiar with the Marxian program understand the necessity of silencing any opposition to their program of force by law. (Many people are under the delusion that communism would overthrow government by force-of-arms and that is why they tolerate the present plans of force-by-law. They do not realize that force-by-arms comes after silence is imposed upon the hapless victims of communism through force-by-law.)

The effort to shut off free debate is, of course, primarily designed in order to insure passage of the iniquitous so-called civil rights legislation now pending. And this boils down to one sentence: Will Congress again violate the Constitution and take unto itself powers not granted it under that Constitution or will the constitutional rights of the States to regulate and administer their own electoral processes, and the right of trial by jury be held inviolate?

Yes, Senator Talmadge, as national chairman of an organization made up of rugged individuals who count their heritage of freedom America's last, best hope for mankind, and who treasure freedom for all, the Sun editor can say with assurance that there would hardly be a dissenting vote: We stand for free and unlimited debate. And we urge you to use all the influence at your command to restore to us our lost freedoms: Self-determination, self-reliance, self-support, all guaranteed us by the Constitution but lost to us through unconstitutional edicts that violate the laws of God and the American Constitution.

Thank you for seeking the opinion of the grassroots (still America's hope of salvation), and God bless you as you seek to protect all of us.

Sincerely,

MARY D. CAIN,
National Chairman.

LIBERTY & PROPERTY,
San Francisco, Calif., May 20, 1957.

SENATE COMMITTEE ON RULES AND ADMINISTRATION,
Senate Office Building, Washington, D. C.

HONORABLE SIR: This organization, composed of patriotic citizens from every State in the Union, is strongly opposed to the proposals which would change Senate rule XXII and would limit debate on vital issues facing the present body.

The maintenance of our historic system of constitutional government depends on the observance of traditional concepts of government. Unlimited debate in the Senate has served this country well in preventing the enactment of vicious laws which would discriminate against a minority.

Government by irresponsible majority can only be referred to as Fascist in nature. Should the Senate become a victim of this type of radical lawmaking, it would serve as a precedent for enactment of even more vicious laws in the future.

Sincerely,

WILLIS CARTO,
Executive Director.

CHRISTIAN CITIZENS CRUSADE, INC.,
Atlanta, Ga., May 21, 1957.

HON. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: With regard to your letter of the 11th concerning the matter of free and unlimited debate, speaking for myself, my associates, and everyone of my acquaintance who believes in constitutional government, there is no question but what the preservation of this principle in the United States Senate is of greatest importance if America is going to remain as a free, independent, constitutional Republic.

Unlimited debate is simply one of the great checks and balances under our constitutional system for the protection of the rights and the liberties of our people.

The radicals and leftwingers who are shedding crocodile tears over the fictitious civil rights issue would be the first to deny the rights of those who oppose them.

May God bless you and give you wisdom and courage in these days.

Sincerely yours,

SHERMAN A. PATTERSON, General Manager.

THE MILITARY ORDER OF THE CRUSADES,
East Orange, N. J., May 25, 1957.

HON. HERMAN E. TALMADGE,
United States Senator from Georgia,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR TALMADGE: A copy of your letter of May 16 to the Committee on Rules and Administration re rule XXII relating to limitation of debate has reached my hands from one of my many affiliations. I am most happy to have received it, and am letting you know how I personally feel about this sewing up one's mouth before all has been stated in any particular field or place.

It is fortunate that you have taken up the cudgels for the unlimited debate, argument, or whatever one wants to call it because, only by fully exploring, planning, and talking and debating any question can we know the full import of what is or is not good for a person and in this case, our Nation. I hope that you can get in there fighting and carry on and win this fight. More power to you.

Yours truly,

ROSS K. COOK.

THE MINUTE WOMEN OF THE UNITED STATES OF AMERICA, INC.,
CALIFORNIA STATE DIVISION,
Van Nuys, Calif., May 21, 1957.

Senator HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: Thank you for your letter to me and the '76 Club containing information on proposals to limit Senate debate. The '76 Club is no

more, but the information will be placed in the next bulletin of the Minute Women.

You will hear from many people on this matter once we have informed our members. Since Minute Women does not as a group make resolutions, the expressions of opinion will come from individuals.

Speaking only for myself, I recall General MacArthur's 1952 keynote address to the then Republican Party, when he said the greatest liberals were those who wrote and supported the Constitution. This document gives more freedom to more people than any other political credo in history. I would be distrustful of any attempts to alter either the Constitution or the traditional parliamentary procedures in the guise of streamlining or modernizing. Every amendment to the Constitution since the 16th amendment has weakened our Government rather than strengthened it. Any proposals to restrict free debate of any and all issues in the Senate would similarly be a step in the further weakening of the Constitution. No subject likely to come before the Senate is too unimportant to give full hearing to any Senator with a point of view on it.

The only changes I can see necessary in Senate procedure (as a result of testifying before Senate Interior and Insular Affairs re Alaska Mental Health Act, February 1956) is that the Members be present on the floor during debates and voting. Now how this can be done and still sit on committees, etc., I don't know unless we have four Senators from each State: Two for Senate procedures and two for hearings and office work.

Enclosed is a copy of the June issue of American Mercury containing an article on page 79 written by me on the subject which I know best: Mental Health Molds Your Mind. I hope you will give it consideration.

Thank you for your courage in taking the initiative on this important change in Senate rules. Perhaps we can look forward to your undertaking the task our dearly beloved Senator Joe left us.

Sincerely yours in guarding the land we love,

GENE BIRKELAND
Mrs. Leigh F. Birkeland,
Acting Temporary Chairman.

MISSISSIPPI STATE TAXPAYERS ASSOCIATION,
Friars Point, Miss., June 10, 1957.

SPECIAL SUBCOMMITTEE OF SENATE ON RULES, ETC.
Washington, D. C.

GENTLEMEN: Do you feel that to choke down those who want full debate on matters of consequence, will develop our Nation?

Why do you all try to govern more and more when you know that the best governed are those who are least governed.

When a nation goes down most everyone goes with it. There are but few exceptions.

Yours very truly,

TOM L. GIBSON.

NATIONAL ASSOCIATION OF PRO-AMERICA, ILLINOIS CHAPTER,
River Forest, Ill., June 4, 1957.

Hon. THOMAS C. HENNINGS, Jr.,
Chairman, Special Subcommittee of the
Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.

We the Illinois chapter of National Association of Pro-America protest the amendment to Senate rule 22 to limit debate because we believe it would take away protection which the American people have against undesirable legislation.

MITZI WATERS, President.

NATIONAL ASSOCIATION OF CHRISTIAN SCHOOLS,
Chicago, Ill., May 23, 1957.

Mr. HERMAN E. TALMADGE,
United States Senate,
Washington, D. C.

DEAR MR. TALMADGE: In response to your letter of May 11 may I state the following:

I am against limited debate if limiting implies the suppression of information pertinent to the issue before the House.

We certainly appreciate the conservative emphasis which is being sounded by a number of our political leaders. May we encourage the economic, conservative program now before both Houses.

Sincerely yours,

MARK FAKKEMA,
Educational Director.

NATIONAL REPUBLIC,
Washington, D. C., May 23, 1957.

HON. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

MY DEAR MR. TALMADGE: Your invitation to appear before the Senate Committee on Rules and Administration is deeply appreciated.

If it were not for the fact that at the present time I am literally swamped with other pressing matters, which I cannot possibly shirk, I would readily accept your invitation, for I feel that debate on legislation should not be further curtailed.

The Founders of our Republic certainly did not limit debate at the Philadelphia Convention. As a result they brought forth a document providing for the greatest freedom of discussion unequaled in human annals.

We are now celebrating the establishment of the first white settlement on American soil at Jamestown. One of the major exhibits there is the Magna Carta, a document on freedom of speech and assembly. As you know, it was signed by King John at Runnymede in 1215, the forerunner of our own rights of freedom.

It is my humble belief that debate should be free as far as our own elected Representatives to Congress are concerned, as long as the arguments used are germane to the subject under discussion. Only enemies of our country, under influence of a foreign power, should be bridled. There are two methods of destroying our system of government. One is by subversion from without our political circles; the other is by amending our Constitution or circumventing it by unconstitutional laws upheld by a subservient court.

It was the intention of the advocates of the court-packing bill in the thirties to circumvent the Constitution by setting up a High Court with a leftwing complexion which would hold unconstitutional leftist laws constitutional. It was the purpose of the Norris amendment to take the amendment powers from our representatives and to throw them to the organized minorities. We were prominent in the opposition forces which victoriously battled the proposal.

We must guard against every effort to centralize government, either by silencing the representatives of the people, or by other means.

Whenever we may be of service, please feel free to call upon us.

With kind regards, we are,

Sincerely yours,

WALTER S. STEELE.

NATIONAL SOCIETY,
CHILDREN OF THE AMERICAN COLONISTS,
Davenport, Iowa, May 14, 1957.

Re Senate rule XXII.

SENATOR HERMAN E. TALMADGE,
*Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.*

DEAR SENATOR TALMADGE: Freedom of speech is guaranteed by our United States Constitution. We voters can speak only through the mouths of our elected Representatives and Senators in the two Houses of Congress.

In no other place is freedom of speech so important as it is in the Senate. No "gag rule" must be imposed.

Our national lawmakers have permitted themselves to be dictated to by the President, who—according to the Constitution—is supposed merely to "execute" the laws which they make. Our national lawmakers have sat helplessly by, permitting the Supreme Court to revise and rewrite the United States Constitution by the "interpretation" of their own inexperience in the field of constitutional law; whereas, the business of the Supreme Court is to uphold all parts of the Constitution—even that part pertaining to States' rights.

Our national lawmakers must not further relinquish their privileges and their obligations by taking away from themselves, and from the people and States represented by them, the right to free and unlimited debate.

I trust that you will do your utmost to insure that there be no change which will limit free debate as granted in Senate rule XXII.

Sincerely yours,

GWEN PATTON INMAN
Mrs. Gerald O. Inman,

National Historian and Past National Chairman of National Defense.

THE NATIONAL SOCIETY OF HUGUENOTS IN THE STATE OF IOWA,

Davenport, Iowa, May 14, 1957.

Re Senate rule XXII.

SENATOR HERMAN E. TALMADGE,
*Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.*

DEAR SENATOR TALMADGE: Our Iowa State motto is: "Our liberties we prize and our rights we will maintain."

I hope that our United States Senators will take that as their motto when they vote upon the question of changing Senate rule XXII, and that their decision will be not to impair in any way or degree their right to free, unlimited debate, for if they do give up that privilege, our Nation will soon have no liberty to prize.

The Supreme Court has robbed the States of their States rights; it has robbed individuals of their freedom of choice. The President forced acceptance of the NATO Status of Forces Treaty, robbing our fighting men overseas of any protection from their United States Constitution; he forbade Senators from voting for the Bricker amendment, which would safeguard our sovereignty and our United States Constitution; he proposed "atoms for peace" and sharing our atomic stockpile with other nations—thereby indicating a willingness to put us at the mercy of fair-weather friends and enemies; he unconstitutionally forces (robs) taxpayers in order to be a "hall fellow, well met" (to be a big shot) among foreigners; he neglects home defenses while building all kinds of defenses and defense-material factories on foreign soil to be taken by (and helpful to) our enemies whenever they desire to strike; he has assumed dictatorship by taking upon himself the power to tax (by his outrageous giveaway program) and the power to declare war—a power not constitutionally his, but recently stolen by him from Congress.

Upon what doth this man feed—that he has grown so great? He feeds upon the truly great, the MacArthurs and the McCarthys, and he uses his power to scourge them who are so far above him that he can never really touch nor besmirch the hem of their garments.

Thank God for men like them and like you, who put patriotism above self, and right before fear. I know you will lead the fight to keep unchanged Senate rule XXII.

Very sincerely,

GWEN PATTON INMAN,
Director and State Chairman of National Defense, Iowa Chapter.

RESOLUTIONS ADOPTED BY THE 44TH ANNUAL CONGRESS, NATIONAL SOCIETY OF NEW ENGLAND WOMEN, MAY 22, 1957, SWAMPSCOTT, MASS.

VI. SENATE CLOTURE RULE

Whereas civil rights agitators are working to change the Senate rule on the closing of debate in that body in order to make easier the passage of civil-rights legislation; and

Whereas seven bills before a subcommittee of the Senate Rules and Administration Committee propose (1) to change the presently required affirmative vote of two-thirds of the Senators duly chosen and sworn to (2) to two-thirds of those present and voting, or (3) to a simple majority vote; and

Whereas traditionally the Senate is a curb upon hasty action by the House and is now the only free parliamentary body left in the world:

Resolved, That the 44th Annual Congress of the National Society of New England Women urge the Rules Committee and the Senate of the United States not to

stifle freedom of speech on the Senate floor, but to maintain its present rule requiring an affirmative vote of "two-thirds of Senators duly chosen and sworn" as this country's greatest protection against adoption of harmful legislation promoted by special interest groups for selfish ends.

NATIONAL SOCIETY OF NEW ENGLAND WOMEN,
Davenport, Iowa, May 14, 1957.

Re Senate rule XXII.

Senator HERMAN E. TALMADGE,
*Senate Committee on Rules and Administration,
 Senate Office Building, Washington, D. C.*

DEAR SENATOR TALMADGE: I understand that a special subcommittee has been named to take testimony on proposals pending to change Senate rule XXII, relating to limitation of debate.

If the constitutional government of our United States Republic is to endure, it is essential that no limitation of any kind be imposed upon the period of debate on any subject in our United States Senate. The system of checks and balances devised by the wise men who wrote our United States Constitution has been badly impaired, as it is, by the usurpation of power by the executive and judicial branches of government. It is imperative that the elected voices of the people, our United States Senators, be given full opportunity to speak for us, ungagged and un-muffled, if we are to retain any vestige of the freedom which made our Nation great.

I hope that you will do your utmost to insure that there be no change which will limit free debate granted in Senate rule XXII.

Sincerely yours,

GWEN PATTON INMAN,
 Mrs. Gerald O. Inman,
Director General

RESOLUTION OF THE NATIONAL SOCIETY PATRIOTIC WOMEN OF AMERICA, INC.

SENATE RULE XXII

Whereas rule XXII, the filibuster rule, is a protection of the minority, and the early patriots knowing that limited debate could be and was harmful to the best interests of the young nation, established the rule now known as Senate rule XXII in 1806 which remained in force until 1917, when it was amended; and

Whereas in 1949 the Senate realizing that the former provisions of the rule were best, changed the rule to its former status, which required two-thirds majority of all Members whether present and voting or not: Therefore be it

Resolved, That the Alabama Council Patriotic Women of America, hereby oppose any change in or amendment to rule XXII of the Senate; and be it further

Resolved, That the Alabama Council Patriotic Women of America, commend members of the subcommittee in their effort to have public hearings on proposed changes in this all important rule, believing as did the Founding Fathers that the citizens have the right of facts and information.

RESOLUTION OF NATIONAL SOCIETY, SONS OF THE AMERICAN REVOLUTION,
 SUPPORTING FREEDOM OF DEBATE IN UNITED STATES SENATE

I, the undersigned, Harold L. Putnam, executive secretary of the National Society of the Sons of the American Revolution, hereby certify that the following is a full, true, and correct copy of a resolution duly proposed and unanimously adopted at its 67th annual congress held at Salt Lake City, Utah, on May 29, 1957, viz:

"Whereas maintenance of freedom of debate in the United States Senate performs the same essential function as freedom of the press, under the first amendment, in keeping the people fully informed in respect to matters which may vitally affect their freedom and the security of constitutional rights.

"In recent years various attempts have been made to bring about the enactment of restricted rules in the Senate of the United States which may endanger freedom of discussion in that House of Congress.

"We recognize the possibility of abuse of the right of free debate in the Senate just as we know that freedom of the press is, at times, abused.

"The alternative, which is control of debate, and may lead to a condition equivalent to the censorship, is too dangerous to be seriously considered: Now, therefore, be it

Resolved, That we express our unalterable opposition to the enactment of any rule in the Senate which will substantially alter the right to freedom of discussion secured by Senate rule XXII.

"We call upon the Rules Committee of the Senate to protect this essential right when acting on pending proposals relating to the change of that Senate rule."

I further certify that said resolution has never been modified or rescinded, and that the same is now in full force and effect.

In witness whereof, I have hereunto set my hand and affixed the seal of said society at the city of Washington, D. C., this 10th day of June 1957.

[SEAL]

HAROLD L. PUTNAM,

Executive Secretary, National Society, Sons of American Revolution.

NATIONAL SOCIETY UNITED STATES DAUGHTERS OF 1812,

Davenport, Iowa, May 14, 1957.

Re Senate rule XXII.

Senator HERMAN E. TALMADGE,

*Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.*

DEAR SENATOR TALMADGE: When the hearings on the subject of changing Senate rule XXII relative to the limitation of debate take place, I wish to be recorded as opposing any kind of limitation.

It is becoming increasingly apparent to even the least observant person that executive dictatorship is replacing our constitutional government "by the people." Such dictatorship, together with judicial misinterpretation by executive appointees to the Supreme Court, presents a grave threat to our Republic.

The voters elect the legislators to represent us, to make our laws for us, and to speak for us. You were not elected to do the bidding of a President; you were elected to check his power if his head becomes too big for his hat. You were not elected to relinquish to the Supreme Court your power to make the laws of our Republic. You were elected to check the power of the Supreme Court. Many of our Senators have forgotten that they represent us, the voters; they are our voice. The voice of the people must not be stifled, must not be limited.

Our freedom depends upon our being heard. I urge you: Oppose any kind of limitation on Senate debate.

Very sincerely yours,

GWEN PATTON INMAN,
Mrs. Gerald O. Inman,
Iowa State President (retiring).

NEW JERSEY CHAPTER OF PRO AMERICA, INC.,

West Orange, N. J., June 12, 1957.

DEAR SENATOR HENNING: The New Jersey Chapter of Pro America is strongly opposed to any limitation of debate in the Senate. We hope that you agree with us, sir.

Sincerely,

WOODWARD,
Mrs. H. Woodward,
President.

REPUBLICAN WOMEN OF PARK RIDGE, INC., ILLINOIS,

Park Ridge, Ill., June 6, 1957.

SPECIAL SUBCOMMITTEE OF THE SENATE COMMITTEE

ON RULES AND ADMINISTRATION,

United States Senate Office Building, Washington, D. C.

GENTLEMEN: We, the members of the Republican Women's Club of Park Ridge, Ill., strenuously oppose any limiting of debate in either the United States Senate or House.

Such limiting of debate violates our freedom of speech; and violates article I of the first 10 amendments which have been in effect since December 15, 1791, to our United States Constitution.

One of the many things our ancestors came to this country for was freedom of speech and we must always keep and guard our freedom.

Yours very truly,

BERNICE L. STEBBINS,
Mrs. W. R. Stebbins,
President.

SAN DIEGO, CALIF., May 29, 1957.

Senator HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: The San Diego Constitutional Foundation, in care of which you addressed your letter to me of May 11, 1957, is no longer an active organization, although it is still legally in existence, and I am still the executive vice president.

However, I know what the attitude of the membership of the foundation would be in regard to changing Senate rule XXII relating to the limitation of debate. They would wholeheartedly agree with you that free and unlimited debate in the Senate of the United States is vital to the maintenance of free constitutional government in this country. Although there may be times when individual or small groups of Senators may abuse this rule, this is an evil which must be accepted to preserve the great good which depends upon the impossibility of gagging the United States Senators.

It is my sincere hope that you will succeed in your efforts to prevent any substantial change in the Senate rules relating to freedom of debate in that body.

Most sincerely yours,

LESLIE E. GENRES.

SMALL PROPERTY OWNERS' ASSOCIATION,
Omaha, Nebr., June 13, 1957.

Senator HERMAN E. TALMADGE,
United States Senate, Washington, D. C.

DEAR SENATOR TALMADGE: Your letter of May 13 pertaining to any proposed changes in Senate rule XXII relating to limitation of debate in the United States Senate arrived on schedule, but I delayed replying because I wanted to bring the matter before a meeting of our entire membership for action. This was done last evening and I am very happy to report that the following resolution was passed unanimously and with enthusiasm.

The resolution follows in quotation marks and we want to thank you for having given us the opportunity of expressing an opinion on this important matter.

"Whereas it has come to the attention of the Small Property Owners' Association of Omaha, Nebr., that several proposals have been introduced in the Senate of the United States, the purpose of which is to change Senate rule XXII relating to limitation of debate in that body; and

"Whereas the Senate of the United States justly deserves the reputation of the world's greatest deliberative body by reason of the existence to its rules permitting the widest possible latitude in debate; and

"Whereas the Senate of the United States has always been an effective check upon the House of Representatives in the matter of hasty, ill-advised and inadequately considered legislation; and

"Whereas existing rules of the Senate provide the last remaining opportunity for minorities to express their views on legislation; and

"Whereas a change in such rules would render the right to the expression of minority views subject to the will, whim, or caprice of the majority and constitute a genuine threat to our representative form of government by denying to those in the minority the last remaining forum to fully express themselves; and

"Whereas the membership of this organization has by reason of its ownership of rental property been cast in the role of a minority group in the matter of legislation relating to Federal rent control, and has had occasion in the past to be grateful for the unlimited opportunity to have its views expressed in the Senate of the United States: Now, therefore, be it

"Resolved by the Small Property Owners' Association in regular meeting assembled at the Rome Hotel, at Omaha, Nebr., on this 12th day of June, 1957, That this organization go on record as being opposed to any amendment of Senate rule XXII

which would result in any limitation of debate in the Senate of the United States, and that it express its vigorous opposition to any such change in the interest of preserving inviolate the Senate as the greatest deliberative body in the world where the views of the minority may be fully and completely expressed; be it further

"Resolved, That a copy of this resolution be transmitted to the Senators from Nebraska, the Honorable Carl Curtis and the Honorable Roman Hruska; be it further

"Resolved, That a copy of this resolution be transmitted to the chairman of the special committee of the Senate Committee on Rules and Administration."

Very respectfully yours,

ARTHUR JENNINGS HANSON, *President.*

GENERAL HEADQUARTERS,
SONS OF CONFEDERATE VETERANS,
Jackson, Miss., May 31, 1957.

HON. HERMAN E. TALMADGE,
United States Senate, Washington, D. C.

DEAR SENATOR TALMADGE: Your recent letter concerning the views of this organization on proposals to change Senate rule XXII relating to the limitation of debate has been received.

The attitude of the Sons of Confederate Veterans is simply that there should be no limitation of debate in the Senate of the United States. We know that any further limitation on debate in that body would be the end of the only really free forum left in the world. Any further limitation on debate would merely mean that we had made the decision to surrender the Government of the United States to minority groups.

Yours sincerely,

WILLIAM D. MCCAIN.

LOS ANGELES, CALIF., *June 5, 1957.*

HON. MICHAEL J. MANSFIELD,
*Chairman, Special Subcommittee,
Committee on Rules and Administration,
United States Senate, Washington, D. C.*

DEAR SENATOR MANSFIELD: This communication concerns the various pending proposals to change rule 22 relating to limitation on debate, now before your subcommittee for consideration.

Free and unlimited Senate debate has not only been recognized as a fundamental constitutional right and privilege, but a necessary instrumentality and safeguard through which the American people may be protected against enactment of dangerous legislation by a tyrannical Senate majority.

One of the proposals to change rule 22 is Senate Resolution 30, introduced by Senator William F. Knowland and endorsed by Senator Lyndon B. Johnson. We are unalterably opposed to this and all other proposals to change this vital rule, and so informed both Senators Knowland and Johnson in our letters of January 8 and February 8, 1957, respectively, copies of which are attached.

In this correspondence we stated it as our opinion that the principal purpose in destroying the protective provisions of rule 22 is to make possible enactment of the Eisenhower administration's civil rights bill, giving additional special consideration and privilege to Negroes.

In this connection, attention was directed to the gross discriminatory special treatment accorded the Negro, through enactment of special rights laws and rendition of Federal court decisions of questionable constitutionality, which is in such sharp contrast with the indifferent treatment accorded the American Indian, who, since being deprived of his lands and hunting grounds by the Federal Government, has been forced to eke out an uncertain existence on barren and unproductive segregated reservations.

It is inconceivable that Members of the Senate, upon whom the American people so greatly depend for protection and maintenance of constitutional government, would give favorable consideration to legislation designed to destroy the protective provisions of rule 22, and we, therefore, respectfully urge your subcommittee to return unfavorable reports on all such proposals now before your honorable body.

Very truly yours,

F. A. LYDY,
President, United Neighbors, Inc.

LOS ANGELES, CALIF, January 8, 1957.

HON. WILLIAM F. KNOWLAND,
Republican Minority Leader,
United States Senate, Washington, D. C.

DEAR SENATOR KNOWLAND: A Washington, D. C., news dispatch datelined January 7, 1957, reports that you are to introduce a bill, which would allow imposition of a gag rule to stop debate on any measure at any time on the vote of two-thirds of the Senators present.

This would mean that less than a majority of total Senate membership could stop debate upon any measure, no matter how important to the welfare of this Nation. In our judgment, such provision would constitute a threat to the best interests of the American people, as dangerous as any of the crackpot gag measures so far proposed in the 85th Congress.

We regret, and are greatly concerned, that you, whom so many Americans have come to regard as one of our most stalwart champions of constitutional government, would become the instrumentality through which legislation so inimical to the best interests of this Nation would be proposed.

We are unalterably opposed to such dangerous legislation, and it will be our purpose to utilize every means to prevent this proposal from being enacted into law.

The question is continually being asked, and we would appreciate enlightenment, as to why such large numbers of congressional legislators and top Federal officials are expending so much valuable time and energy, that should be otherwise employed, in endeavoring to force enactment of discriminatory and undesirable legislation, much of which is of questionable constitutionality, in order to accord Negroes special rights and privileges, when their legitimate rights are now more than fully protected under our Federal Constitution and numerous biased and discriminatory class decisions of our Federal courts.

We shall greatly appreciate hearing from you on these important matters, at your earliest convenience.

Very truly yours,

F. A. LYDY,
President, United Neighbors, Inc.

LOS ANGELES, CALIF., February 8, 1957.

HON. LYNDON B. JOHNSON,
Senate Majority Leader,
United States Senate, Washington, D. C.

DEAR SENATOR JOHNSON: We have your letter of January 16, 1957, in reply to ours of January 11, with respect to Senator Knowland's resolution, Senate Resolution 30, to amend Senate rule 22.

You state that you and Senator Knowland are trying to act affirmatively to write the two-thirds rule into the permanent rules of the Senate. However, this resolution destroys the protection of the present two-thirds rule and substitutes therefor a rule under which it would be possible for less than a Senate majority to impose a gag to end free debate.

You refer to Vice President Nixon's statement of January 4, 1957, and state that, in view of his opinion, there are no protective provisions of rule 22. However, Mr. Nixon's statement was merely an expression of his personal opinion and not a ruling, and he so stated. Also, there is a question as to whether his views may not conflict with provisions of article I of the Constitution, in which case they could have neither force nor effect.

Is it not true that, by destroying the present protective provisions of rule 22, the Eisenhower civil-rights program, giving Negroes additional special consideration and privilege, would be assured of passage?

In this connection, we have endeavored to determine why so many in high places are so overzealous in their efforts to force enactment of special rights legislation for the sole benefit of the Negro, which, as stated in our letter of February 5 to Attorney General Brownell, copy attached, is in such sharp contrast with the indifferent and neglectful treatment accorded the American Indian, who for years has been forced to eke out a bare existence on barren and unproductive reservations, where he was herded after being stripped of his lands and hunting grounds.

Why has not the Federal Government called in business groups and others to consider the plight of the Indian and to adopt measures to advance his economic

status, as is so frequently done by Vice President Nixon in connection with the Negro? Why is there such discrimination practiced in the treatment of these two groups? Could this be because the Indian is not allowed to vote?

We are opposed to amendment of rule 22, and respectfully ask that you, in the interest of the American people, withdraw your support of Senator Knowland's resolution.

Very truly yours,

F. A. LYDY,
President, United Neighbors, Inc.

RESOLUTION UNANIMOUSLY ADOPTED BY THE ASSEMBLY OF THE UNITED MOTHERS OF AMERICA, INC., AT AN EXECUTIVE SESSION HELD WEDNESDAY, MAY 15, 1957, AT CLEVELAND, OHIO

Whereas a proposal is before the United States Senate to abolish the time-honored Senate rule 22, which grants Members of the United States Senate the right to unlimited debate, subject to cloture action by a two-thirds majority of the Senate membership; and

Whereas history and experience with many dangerous measures considered by the Senate in the past confirm the wisdom and necessity of permitting Senators ample opportunity to debate and consider issues vital to our Nation's survival and security; and

Whereas filibustering, criticized by opponents thereof, is not only justifiable but vital to the defense and preservation of American institutions and liberties, especially when too many Senators yield to subversive pressures on dangerous measures without understanding the consequence of their vote; and

Whereas the two-thirds vote requirement in Senate rule 22 to close off debate is in harmony with the prerogative of the Senate for ratification of treaties by a two-thirds vote majority; and

Whereas, in this age of worldwide political treachery and diplomatic conquest of nations, it is of even greater importance to retain and exercise the restraining safeguards available to the Senate; and

Whereas it is common knowledge to patriots that the voiding of Senate rule 22 is principally sought by leftwing and international subversives who seek the destruction of the United States so as to further their scheme for establishing a socialistic world government: Therefore be it

Resolved, That we petition the United States Senate to retain Senate rule 22 as vital to our Republic's survival, and that an investigation of our Republic's subverters be undertaken forthwith.

UNITED MOTHERS OF AMERICA, INC.,
M. KELLY, *Secretary pro tempore*.

THE UNITED STATES FLAG COMMITTEE,
Jackson Heights, N. Y., June 22, 1957.

HON. HERMAN TALMADGE,
*Subcommittee of Rules Committee,
Senate Office Building, Washington, D. C.*

DEAR SENATOR TALMADGE: We wish to have this statement read and placed on record in the printed copy of the hearings you are conducting relative to changing the Senate rules.

This committee is definitely opposed to the proposed scheme (and we believe it to be just that) for changing the rules to limit debate. We believe there should be far more debate on important issues, rather than less. American citizens should have ample opportunity for expressing their views on important matters pertaining to our National Government and sovereignty. We think this has already been limited and not altogether true.

Hearings have frequently been held on vitally important matters, with few, except those who desired to put something over, actually knowing anything about them. This should not be in a government for and of and by the people, which, unfortunately, seems to be rapidly disappearing. If individuals cannot be present at these hearings, they must depend upon their elected Representatives in Congress to represent them in such debate. Certainly, unless we are already a totalitarian government, our Congressmen should not be limited.

To limit debate is a dictatorial, totalitarian, socialistic idea, whereby a few decide and rule, and the people lose their rights and their freedom granted them by our Bill of Rights. We stand firm for our constitutional form of government and our National Republic—free from limitations and dictatorship. The excuse that there is not time to discuss all matters is no excuse. No more issues should be taken up in one session of Congress than can be given sufficient time and proper consideration. To decide anything without proper time and debate would be national suicide.

Therefore, this idea of changing the Senate rules to limit free expression of the people, we believe to be contrary to our form of constitutional government which our wise and illustrious forefathers established here, and which we desire to have continued.

Respectfully submitted.

HELEN P. LASELL.

VIGILANT WOMEN FOR THE BRICKER AMENDMENT IN IOWA,
Davenport, Iowa, May 14, 1957.

Re Senate rule XXII.

SENATOR HERMAN E. TALMADGE,
*Senate Committee on Rules and Administration,
Senate Office Building, Washington, D. C.*

DEAR SENATOR TALMADGE: Free debate in the Senate is an essential of our constitutional government. If free debate were to be limited, in direct proportion would our freedom be limited.

We oppose any change in Senate rule XXII which would result in limitation of debate.

Very sincerely yours,

GWEN PATTON INMAN,
Mrs. Gerald O. Inman, Iowa Chairman.

At a meeting of the executive committee of the Western Tax Council, Inc., held in the offices of the council, room 617, 38 South Dearborn Street, Chicago, Ill., on Friday, May 24, 1957, Frank E. Packard, executive vice president, offered the following resolution on the proposed change in Senate rule XXII:

If history teaches anything, it is that human freedom goes hand in hand with the freedom of speech under proper parliamentary restrictions. Freedom of speech does not mean that mobs may assemble and, amidst confusion, attempt to transact business. Whenever a single individual is prevented from expressing his convictions, liberty is in danger.

The committee members unanimously approved that Senate rule XXII should not be changed so as to impair the right of a member of the Senate to freely and completely express himself at any and all times. However, Mr. George Taft, chairman, called attention to the fact that the council was an incorporated non-profit, nonpartisan, nonpolitical, one-purpose educational organization and suggested that Mr. Frank E. Packard and/or Mrs. Fern Martin, whose names are well known to our organization and membership, communicate with them all as individuals fully outlining the situation and suggesting they write both their Senators and Congressmen and the Committee on Rules and Administration; and, it was further suggested that Mr. Frank E. Packard attend any and all hearings before the committee after considerable discussion and upon advice of the council.

The committee unanimously approved Mr. George Taft's suggestions.

FERN MARTIN, Acting Secretary.

Whereas United States Senate rule XXII now provides for the imposition of cloture through a vote of two-thirds of the Senate membership; and

Whereas proposed amendments aim to eliminate the precious requirement of two-thirds of the entire roll of the elected Senators to close debate; and

Whereas the right to continue debate is most valuable to free citizens and their representatives in Congress assembled; and

Whereas it is undemocratic and un-American to cut off or to severely limit debate on vital American issues; it is now

Resolved, That the present rule XXII of the Standing Rules of the Senate must be continued in effect to protect the best interests of the citizens of the United States of America.

The foregoing resolution was unanimously carried at a meeting of the board of directors of the American Education Association held on June 14, 1957, in New York, N. Y.

AMERICAN EDUCATION ASSOCIATION,
CATHRYN L. K. DORNEY,
Executive Director.

NEW YORK, N. Y., June 15, 1957.

AMERICAN VETERANS COMMITTEE,
Washington, D. C., June 17, 1957.

HON. HERMAN E. TALMADGE,
Committee on Rules and Administration,
United States Senate, Washington, D. C.

DEAR SENATOR TALMADGE: We have received your letter regarding the hearings and study being made of rule XXII in the Senate. We are glad to express the views of the American Veterans Committee on this important matter, and we respectfully request that this communication be made a part of the record.

The American Veterans Committee, of course, favors full discussion of all matters which come before the Congress since we realize that Members of Congress should not have to legislate in a vacuum. Nonetheless, we are equally convinced that there should be a means whereby when the majority of the Members want to get a vote on a particular issue, they ought not to be hamstrung by a majority.

We support the Douglas bill, Senate Resolution 17, cosponsored by Senator Javits and others. AVC feels that this measure provides adequate time for bringing out all of the facts of any measure which might come before the Senate. At the same time, this bill gives to a majority in the Senate the right to ask for and to obtain a vote on any matter which may be before it.

At the 10th national convention held in Washington, D. C., in April, AVC adopted a national affairs platform which calls for "changes in the rules of the House and Senate of the United States which will make it impossible for a willful minority to delay a vote on legislation after a reasonable period of debate has taken place."

Sincerely yours,

KENNETH M. BIRKHEAD,
Executive Director.

STATEMENT BY JOHN K. CRIPPEN, PARK RIDGE, ILL., PREPARED TO BE READ
JULY 2, 1957, ON PROPOSED CHANGES IN SENATE RULE XXII

The undersigned, executive secretary of the Anti-Communist League of America, an organization devoted to helping in the fight to preserve the basic freedoms of our beloved country, and to fight against the insidious encroachments of communism and its twin brother, socialism, has been asked by the Honorable Herman E. Talmadge, United States Senator, to appear before this committee and to present either my personal views or those of the league on the proposed changes in Senate rule XXII, on limitations upon debate in the Senate.

Time has not permitted the taking of a poll of members and affiliates of the league, but I have discussed with and corresponded with a number of our key members and directors, including our president, Mr. Theodore W. Miller, of Chicago, and general counsel, John Unger, a probate judge residing in Danville, Ill. In addition, prior knowledge of the earnest beliefs and convictions of affiliates of the league, voluminous correspondence and reports, leads me to believe that I am truthfully expressing herein the feelings of those individuals and, in most cases, of the organizations or publications of which they are a part.

Without attempting to go into a detailed analysis of the proposed changes in Senate rule XXII, many of which are obviously intended to lighten or mollify the more drastic changes proposed, such as that which would enable 18 Senators, in a motion, to almost immediately cut off further debate upon any bill upon which those 18 members so moved.

I can say unreservedly, speaking for myself as an individual, and I believe accurately presenting the similar views of the great majority of the league's members, that we would unalterably oppose any method or effort to drastically limit debate in the United States Senate or House, such as is proposed in portions of the proposed amendments, particularly as proposed in section 2, where a small minority of Senators can, with a single motion, shut off all further argument, discussion, consideration, exploration, or factfinding in the Senate; and which would further have the effect of calling up a bill, however controversial, for passage before some Senators, who may not have been too well informed upon a given measure, have had an opportunity of scrutinizing the measure in question. For a drastic limitation upon debate would accomplish precisely these things.

I have been cautioned by Senator Talmadge, a great Senator, in my opinion, and a man dedicated to preserving our matchless Constitution, to confine my remarks to matters pertinent to the proposed Senate rule. This I have tried to do. However, one cannot discuss or editorialize upon so important a matter as a change in a standing rule such as Senate rule XXII, without touching upon the matter of free speech. Many members of the league, including myself, have had some definite experiences relating with efforts to curb free speech, and we can speak with some authority on the subject. There have been suppressions of information with respect to legal information involving the communistic National Lawyers' Guild in the Chicago area, as an example, and efforts to suppress such information when collated and presented in newspaper articles and letters—one of these involving a trial in a Federal court, where an all-American jury promptly acquitted Mr. Theodore W. Miller and myself, in a brilliant defense by our general counsel, the Honorable John Unger. There have been many, many other cases in all parts of our land brought to our attention. It is not my intent to discuss them here. I mention the matter in passing merely to indicate that the efforts to restrict a free and untrammelled discussion of facts do not begin and end in the United States Senate. They are everywhere about us. The preservation of our Union requires that people may have access to information and facts.

Thus, I view, speaking here only for myself and as an individual, the efforts to restrict debate in the Senate through some of the provisions of the proposed amendments as a move to restrict free speech, where it is so urgently and desperately needed. Where, if not in our great legislative bodies, is an honest, open, untrammelled debate of basic issues needed?

There has been, through other means, far too much limitations already placed upon debate. How many "plans" have been laid before the American public, only in glossy public-relations ways, and without detailed discussions of their ramifications. How many secret treaties, agreements, Executive agreements, or discussions have taken place, often between foreign and even enemy powers, without an adequate presentation of their true imports before the American people.

Shall the Senate then, through drastic limitations on debate, be deprived also of the right to explore these matters about which, often, the American people have been told but little? Shall these matters, in a flowery-worded, legalistic measure, be formulated into a bill for consideration by our highest legislative body without due consideration? Shall the last resort of free debate, in the very body where debate is the breath of our national existence, be stripped from us? Is our Senate to be finally reduced to a rubberstamp Kremlin-type organization, whose only function will be to place their blessing upon some latest plan or scheme which might easily become the law when there is not "free and untrammelled discussion," even though that plan might easily become another device for wrecking our Constitution?

I should like to depart, for a brief moment, from the strict consideration of this matter of drastic limitation of debate in the Senate, to a plan which this observer personally believes a very dangerous plan. The statements are made to indicate that we need more, not less, debate upon vital matters. I am referring to the "Atoms for Peace" proposal, which our late great Senator Joseph R. McCarthy, warned us about, almost with his dying breath. If you will examine the cover of the document which outlines the setting up of an international agency for the exchange of atomic materials and know-how, you will note that this document was placed before the United Nations 5 months prior to the time it was placed before the American people, and, in the words on the face of the document, the limitations of secrecy were removed. The point I am making here is that there have been some open discussions about this proposal, and its dangers brought

out. Perhaps the bill will pass (though I personally believe it to be a very dangerous, very treacherous bill per se). The proposed limitations on debate could very easily do away with such debate although the very security of America may be in the balance.

Another example, which we cannot help but ponder, and which I mention briefly here because of its possible application, is the so-called civil-rights bill. Leftwing newspapers and columnists try to identify opposition to this measure strictly to southern Senators, and—more basically speaking—to southerners, whereas such is not the case. In the enormous number of publications, clippings, and so on, which we have seen from the rightwing of America, we can find almost as much opposition to the presently proposed civil-rights bill in the North, East, and West, as in the South itself.

The civil-rights bill inherently holds a threat to our liberties of incalculable possibilities. In its effort to strip some of our people (those charged with a crime of discrimination, as it is defined) of the basic right of trial by jury, we must face squarely all the implications thereof. Stripping of any citizens of rights of trial by jury would be the rankest sort of discrimination—discrimination at its very worst. While the Communists loudly cry for passage of the civil-rights bill, we must surely have left to us, in the United States Senate, the "right to be heard" by opponents, as well as proponents of the bill. Regardless of how this bill may be later voted upon, the fact remains that all of the pros and cons should be heard—and not just the cons.

In these closing days of Congress—with both good and bad bills to be considered, voted upon, and accepted and rejected—our elected representatives must not yield to the impulse to "vote it through and go home." This would imply that all bills which contain elements of badness, or implications of further loss of our constitutional system (as some of them, in my opinion, do) if they have been sold by vast public relations and propaganda effort, would go through—without those changes or amendments necessary to purify and clarify them. If debate—the one element for bringing to the light inherently dangerous implications of a given bill—is shut off, I repeat, the United States Senate would then become merely a rubberstamping organization. If the people themselves are uninformed about all the elements of a proposed piece of legislation, and if informed men in the Senate are unable to counter that widespread misinformation and propaganda which sometimes precede the launching of any controversial measure, then all avenues of information have been shut off to the general public.

As an American who loves his country, and our matchless and often-attacked United States Constitution, I unalterably oppose any serious or drastic limitations in debate in the United States Senate.

I will go further, and state that I oppose, both individually, and as an executive officer of the Anti-Communist League of America, Inc., its affiliates, and many friends and coworkers and organizations whom we support to the fullest of our individual and collective abilities, are undoubtedly equally and jointly opposed to any such drastic limitations of debate in the United States Senate or House. I personally favor retention of Senate rule XXII as now constituted, without any amendments, but particularly without any such amendment as would permit a small minority bloc of Senators to place a ban on free speech upon all other Senators.

A RESOLUTION OF THE ASSOCIATION OF CITIZEN'S COUNCILS OF SOUTH CAROLINA, SUMTER, S. C.

Whereas there are seven Senate resolutions now pending before a subcommittee of the Committee on Rules and Administration of the United States that propose changes in Senate rule XXII, which rule now permits free and open debate of all legislation on the floor of the Senate; and

Whereas the excesses of an unrestrained majority can be as ruthless, dangerous, and destructive to the rights of a people as are the excesses of totalitarianism; and

Whereas through the medium of free and open debate the Senate provides the only practical means whereby the American people can be informed of all measures affecting their lives and fortunes; and

Whereas this privilege of free and open debate provides the only means whereby measures of overriding importance can be put to the critical test of deliberate and unhurried examination by the collective intellect of the people and of the members of the Senate, a body explicitly created as one of our governmental checks and balances; and

Whereas in most instances the said resolutions propose to permit the drastic curtailment, if not the complete destruction, of this right to free and open debate by no more than 33 Senators out of a total authorized Senate membership of 96 Members and in no instance by more than a simple majority of such total authorized Senate membership; and

Whereas in most instances the adoption of any of the changes proposed will place potentially tyrannical powers in the hands of a small minority of future Senate Members for whose prudence and patriotism no present Member of the Senate can now vouch: Now, therefore, be it

Resolved, That we, the Association of Citizens' Councils of South Carolina, do hereby appeal to the honorable members of this subcommittee to recommend that further consideration of these dangerous changes in Senate rule XXII be abandoned and that the said rule be permitted to remain unchanged; and be it further

Resolved, That a copy of this resolution be mailed to each Member of the United States Senate from the State of South Carolina.

Respectfully submitted this the 21st day of June 1957 by direction of the board of directors,

THE ASSOCIATION OF CITIZENS' COUNCILS
OF SOUTH CAROLINA,
By T. D. KEELS, *Chairman*.

CIRCUIT RIDERS, INC.,
Cincinnati, Ohio, July 10, 1957.

HON. HERMAN R. TALMADGE,
Chairman, Senate Special Subcommittee,
Senate Office Building, Washington, D. C.

GENTLEMEN: It is a privilege to be recorded as advocating the continuance of the present and long-standing rule and practice in the United States Senate which permits free and unlimited debate.

In contrast with executives or officers of church-related organizations, who have created the impression they spoke for the individuals in their organizations, I announce that I speak as an individual who reflects the opinions of clergymen and laymen in the United States.

There is a mistaken impression that officers and executives of church and church-related organizations speak for millions of people. In the case of the Methodist Church, no officer can speak for the church.

It is important to the security of the United States as a sovereign power and of prime importance to the citizens of the United States that a Senator or group of Senators continue to be able to speak or debate without limitations beyond those already established by many years of custom and rules of long standing.

The men who founded the United States Government and established its structure were wise men. These Founding Fathers apparently believed they had devised a balanced legislative, executive, and judicial system of government which would always retain the identity, integrity, and independence of each of these three branches of government.

During the past two and present administrations there has been a shocking and alarming destruction of the effectiveness and value of the three-unit system of government made up of the legislative branch, the administrative branch, and the judiciary.

The executive branch of our Government, through the allocation and trading position of billions of dollars, political favors, prestige, and other bargaining positions, has emasculated and desecrated the function and performance of the legislative branch of the Government. It appears that an elected representative of the people in the Congress is more at the mercy of the executive branch of the Government than dependent upon his constituents.

Legislative aims and goals of the White House, by pressures upon the legislative branch of the Government through the direct efforts of the executive branch, seem to have been aided, and at times superseded, by decisions made by the Supreme Court, manned with individuals some of whom are not believed to possess either the legal training, knowledge, temperament, or other characteristics which would enable a jurist to reach decisions based upon law. It would appear that during the past 20 years decisions of the Supreme Court often fail to interpret the law. More often they seem to reflect the political, economic, and sociological beliefs or prejudices of individual judges, plus the habit or custom of reflecting the political, economic, and sociological viewpoints of the White House apparatus.

An important part of the formula which made the United States a great power for God and good, and which until now protected and preserved the rights of individuals and minorities, has been the inability of a numerical majority or a superior force in the Government to arbitrarily remove the rights of individuals or minorities.

It is imperative for the protection of all individuals and minorities (even those who now think they represent a majority position in the United States) to preserve the right and privilege of any Senator, or group of Senators, to speak or debate without limitations beyond those now incorporated in the rules and contained in the customs of the United States Senate.

It might be said that an individual Senator, or an occasional group of Senators, might sometimes capriciously take advantage of the practice of free and unlimited debate on the floor of the United States Senate. Those who are thus concerned, are requested to visualize whether or not an individual Senator, or a group of Senators, could successfully and continuously debate without limitation if the subject of their unlimited debate was shallow or meaningless. Such a fiasco would fall of its own weight, and the constituents of the individual, or individuals, would correct that condition at the next election. A minor nuisance or annoyance such as this would be a historic speck compared with arbitrary or tyrannical pressures further directing, or forcing, the United States as we know it into the historic 'garbage can.

M. G. LOWMAN.

COMMITTEE FOR CONSTITUTIONAL GOVERNMENT, INC.,
New York, 17, N. Y., July 9, 1957.

Senator THOS. C. HENNING, Jr.,
Senate Office Building, Washington, D. C.

HONORABLE AND DEAR SIR: Herewith a corrected statement of Edward A. Rumely, regarding the proposed amendments to Senate rule XXII. The correction is in the final paragraph on page 1. The Senate Judiciary report, one of the ablest public documents ever presented, was written by Senator Joseph O'Mahoney and was printed by the Senate committee in 10,000 copies, while the Committee for Constitutional Government printed and distributed an additional 200,000 copies.

Supreme Court decisions, and the dominant position of the executive branch because of huge spending under its control, have thrown new and greater responsibilities on Congress to assert its proper role as "general manager" of the United States and to reestablish the balance between the three departments that the Constitution requires.

In this situation, the opportunity for adequate discussion without cloture is a valuable Senate right and a protection against precipitate action at a time when crowd emotions have been aroused.

Great issues persist and adequate discussion is basically important even if it involves postponement of decision over a longer period from one session of Congress to later sessions.

COMMITTEE FOR CONSTITUTIONAL GOVERNMENT, INC.

STATEMENT OF EDWARD A. RUMELY, REGARDING PROPOSED AMENDMENTS TO SENATE RULE XXII

My name is Edward A. Rumely. I am executive secretary of the Committee for Constitutional Government, 205 East 42d Street, New York City.

Had Senate rule XXII not been in effect in 1937, there is little doubt that the debate on the reorganization of the Judiciary would have been ended by cloture long before the country could have been made aware of the danger to our form of government in the bill entitled "Reorganization of the Judiciary."

This bill would have empowered the President to appoint six new members to the Supreme Court and thus bring the Judiciary branch of government under the control of the Presidency. The President at that time had been elected by the largest electoral vote in history. None ever had a greater majority of his own party in both Houses of Congress. The President stood at the peak of his power and he sought more.

Senator Borah told a group of opponents of this Court-packing bill, "There is no hope of defeating this proposal unless the people can be aroused. If this is not a people's fight, the fight is lost."

¹ Garbage can of history.

Under the chairmanship of Frank E. Gannett, the Committee To Uphold Constitutional Government was to reach home folks and their leaders by mail, by radio, by radio transcriptions, by press releases, by telegram--every medium of communication. During the next 20 weeks, 10 million envelopes packed with arguments against the Court-packing plan were mailed. Every envelope went to a carefully chosen recipient.

This intensive campaign began February 6 and was continued without interruption and steadily broadened. Every piece of mail that went out carried a subscription blank. As rapidly as funds were available, the educational effort was extended; 20,000 individuals sent in funds averaging \$12.50 per person. But despite this, the issue was still undecided in June. At that time the opponents of the bill could definitely count on only 44 votes. There were 12 Senators in 11 States who had not yet made known their decision. James A. Farley, who was managing the President's bill, said, "We have this Court bill in the bag."

In the middle of June, the Senate Judiciary Committee released an adverse report, of which the Senate printed 10,000 copies and the Committee To Uphold Constitutional Government printed 200,000 for immediate distribution. This was one of the most effective statements. It called for a decisive defeat of the bill so that no future President might ever attempt to dominate the Supreme Court.

At that time, the showdown neared. The opponents of the amendments were sure of only 44 votes; 5 more, or 49 in all, were needed; 12 Senators were believed to be wavering or still undecided.

Then the committee made its supreme effort. Out of its lists of hundreds of thousands were culled the names and addresses of 32,000 influential citizens in States represented by the 12 doubtful Senators. To each of these 32,000, at a cost of \$1.27 per name, the committee sent a 125-word telegram explaining the situation. In part, it read:

"Your Senator (the recipient was given his name) in pivotal national position. With four others he can defeat Court altering bill, protect Nation and preserve democratic government in gravest constitutional crisis. Issue transcends party lines. You and your family can well pledge you will never forget his stand protecting courts from politicians' control."

This was on a Thursday. When the 12 Senators reached their offices the next Monday morning they found floods of telegrams demanding that they vote against compromise on the Court bill. The next day, 8 of these Senators met in a colleague's office, and all but 2 expressed intention of voting to recommit the Court bill to the Judiciary Committee. That was 6 more votes, where 5 were needed, and it meant the legislative death of the Supreme Court plan.

Thus ended one of the most dramatically waged congressional battles in our history--as well as one of the most effective and intensive public mobilizations ever put forward during any legislative struggle.

But it had required a full 6-month period before the people of the country could be sufficiently informed to understand the destructive nature of the Court-packing bill and to induce them to speak to their representatives in Congress, and particularly in the Senate. Even so, in the final count opponents had but 50 votes to recommit the bill.

Had cloture been possible, there is little doubt that it would have been invoked and debate cut off after a month or two of discussion. Thus rule XXII saved the independence of the Supreme Court.

I have checked my own judgment with that of Senators who participated in the fight. Senator Burton K. Wheeler was one of the leaders. He recently gave it as his judgment that had cloture been available, the fight to safeguard the Supreme Court could not have been won.

STATEMENT OF LT. GEN. PEDRO A. DEL VALLE, UNITED STATES MARINE CORPS (RETIRED), PRESIDENT, DEFENDERS OF THE AMERICAN CONSTITUTION, ON PROPOSED CHANGES IN RULE XXII

As president of the Defenders of the American Constitution, Inc., an organization dedicated to the preservation of the basic principles of the American Constitution, I hereby enter our determined objection to any changes in Senate rule XXII which have for their objective, facilitation of limit of debate.

Among these principles are found the sovereignty of the individual States which form the Union; and the God-given right of the people of these sovereign

States to defend themselves by every means available, against any invasion or encroachment by the Federal Government of this sovereignty. The most important single means of orderly, peaceful defense of these basic rights, guaranteed by the Constitution, is by means of their representatives in the Congress. The amendments on rule XXII contemplated in Senate Resolutions 17, 21, 28, 29, and 32 have obvious, immediate, and very dangerous implications because they would deny a beleaguered minority the right, by unlimited debate, to defend their sovereign rights against an unconstitutional assault by a misguided majority. The honorable gentlemen of this committee are respectfully requested to consider that this attempt to limit debate is a two-edged sword. It may cut right today and left tomorrow. It may be their ox that was gored today, and yours tomorrow.

That the majority can be in error is a fact proven by such historical blunders as the 16th amendment, the 18th amendment, the Federal Reserve Act, all of which are contrary to the basic principles of the Constitution, in which the powers of the Federal Government are spelled out, and in the 10th amendment wherein it is made clear that the powers not granted by the sovereign States to the Federal Government in forming the Union, are reserved to the States and to the people of the States. Any act of the Congress, or any amendment to the Constitution, which strays beyond the strict limits of the proven basic principles of the Constitution is bound, as George Washington warned us in his Farewell Address, to end disastrously. There is no need to remind the honorable gentlemen that they, even as I, have sworn an oath to defend and support the Constitution against all enemies, foreign or domestic.

Even now, we see the chaos induced by the highest Court in the land, in departing from those basic principles of which I speak, and in disregard of their oath to support the Constitution, upset the system it creates of checks and balances by invading the well-established prerogatives of the legislative branch. The Congress is astir with this violation of their constitutional rights. Would they submit without a struggle, or would they take every known constitutional means to protect their rights? Article III, section 2 of the Constitution reads as follows: "In all other cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

This digression is justified because it is a case in point. Departure from the principles of the Constitution means the end of the Republic. The proponents of the changes in rule XXII may well be aiming at the ulterior purpose of forcing a minority to accept an invasion of their sovereignty, such as the pending civil-rights bill indubitably is, by making it impossible for the minority to defend their sovereign rights by unlimited debate. I conclude, gentlemen, by repeating that this dangerous weapon you are forging here cuts both ways, and that its advocates today may easily be its victims tomorrow. Take warning from the tale of the Frankenstein monster.

I thank the committee for this opportunity to express the views of the Defenders of the American Constitution.

STATEMENT OF JOHN FRANK, PRESIDENT OF THE FRANKOMA POTTERY, SAPULPA, OKLA., PRESIDENT, TULSA MANUFACTURERS CLUB, TULSA, OKLA., ON PROPOSED AMENDMENTS TO STANDING RULE XXII

HON. HERMAN E. TALMADGE,
United States Senate,

Committee on Agriculture and Forestry, Washington, D. C.

Mr. Chairman and honorable Senators, it is a matter of real regret that I cannot present this statement in person. My business requires my constant attention, especially at this season of the year. Therefore, I am presenting this brief and humble statement in relationship to the issue at hand.

I claim no unusual wisdom, and I do not represent myself as a profound student. However, I am considered by my business associates and competitors as a typical independent manufacturer. It has been my honor to be recognized by national, regional, and State organizations interested in industry in general as well as the specialists in my own field.

I realize full well that this does not qualify me to speak with authority on the subject of constitutional law or parliamentary procedure, but I can at least speak as a citizen and taxpayer with what I believe to be a mature under-

standing of the rich traditions of our constitutional Republic. I have spoken before over 500 educational, professional, and religious groups, both large and small.

As every Member of the United States Senate knows, the independent and small manufacturer is engaged in one of the most hazardous business enterprises known to our society. Competition is tense, keen, and permanent. It requires that we keep our mind on our business every minute of the day and every day of the year.

We cannot afford to retain special representatives in the Nation's Capital, and we do not have the time to journey to Washington ourselves except under rare and unusual circumstances. It is great consolation for me to know that if anything is brought before the Congress of the United States which might imperil my business, it cannot be rushed through as long as one man in the United States Senate understands the disastrous potentials contained in such proposed legislation.

The right of unlimited debate protects our citizenry from certain attempts which might be made to rush legislation through Congress in favor of some special interest. I say unlimited because some issues demand more time for thorough consideration than others.

To illustrate: Those of us who are engaged in the manufacture of porcelain, potteries, and other forms of ceramic merchandise are constantly facing the danger of being annihilated by foreign competition thriving on cheap labor. Five large China plants have closed their doors during the last 30 months in America mainly for this reason. As long as one man in the United States Senate is well informed concerning our problem, we can hope that unwise legislation, regardless of its sincerity, will not be passed until we have had time to alert our fellow manufacturers in every district and State in order that they in turn may concentrate on the enlightenment of their elected representatives concerning any oninous legislation which might be proposed regardless of how sincere the proposal may be. The right of unlimited debate in the United States Senate is the most logical method which could be imagined for protecting minorities.

Occasionally, our elected representatives forget that there are other minorities beside racial minorities in the United States. Businessmen are a minority. Small manufacturers are indeed in the minority, but as long as we have the magnificent formula of unlimited debate in the United States Senate, one Senator can slow down the legislative process if it becomes necessary to protect one isolated group against the potentials of hysteria, propaganda, corruption, and even sincere but misguided haste. I appeal to the Members of the United States Senate to do nothing to destroy the beautiful assurance which I have as an American citizens in knowing that one Senator or a little handful of Senators can save me from becoming the victim of legislation which might pass if deliberative processes intended by our Founding Fathers are not duly and properly respected.

I am indeed honored for the opportunity to present these humble remarks. Thank you.

STATEMENT OF ROBERT H. GOLDSBOROUGH, BALTIMORE, MD.

The Constitution has provided for passage of bills in the Senate into law and proper discussion or unlimited debate has been established by these years of precedent and where it is true in a certain few instances a seemingly good piece of legislation has been talked into the ground, this procedure has provided ample protection for the less populated States to safeguard their constituents.

I am aware of the arguments put forth by those who wish to change Senate rule XXII by limiting debate in their statement that "after all that is enlightening has been said then debate should be shut off and a vote be taken," however, the same advocates want a simple majority to close off debate which in the eyes of a smaller State affords them no protection whatsoever from vote trading of larger States to gain a purely sectional piece of legislation at the expense of the rest of the States. Also, if a simple majority was allowed to shut off debate the powerful States with plenty of trading would simply bide their time and when ready shut off debate by a simple majority. This, of course, in effect would be having law made by a simple vote.

For these reasons I respectfully request that Senate rule XXII be left unchanged.

EMORY UNIVERSITY,
DEPARTMENT OF POLITICAL SCIENCE,
Emory University, Ga., July 28, 1957.

Senator JAVITS,
Washington, D. C.

DEAR SENATOR JAVITS: I see by a press report that Dr. Albert Saye of the University of Georgia has defended (before your subcommittee) the filibuster and bases his argument largely on our constitutional system of checks and balances. Dr. Saye is an old student of mine and a good friend, but he is a conservative and I am a liberal. I don't see any validity to his argument. The Preamble to the Constitution says "the people of the United States" established our Constitution. To me this means that the people of the United States—not the States—are sovereign. How can the people be sovereign while a small band of Senators can thwart their will by filibustering and killing legislation which they favor? In order to carry out the will of the people there must be majority rule. One of the founders of the Democratic Party—Thomas Jefferson—said the democratic principles in which he believed included majority rule, equal justice to all, and civil liberties. He is the patron saint of many Democrats—conservative as well as liberal.

I would like to refer you to a book of which I am coauthor, *Fundamentals of American Government*, published by McGraw-Hill Book Co. (1957 edition), chapters 12 to 14, inclusive, in which I discuss the Congress. You will find a great deal of material there on the filibuster.

Sincerely yours,

CULLEN B. GOSNELL,
Professor of Political Science, Emory University, and Director of Emory University Institute of Citizenship.

STATEMENT OF BERNARD WEITZER, NATIONAL LEGISLATIVE DIRECTOR, JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA

On behalf of the Jewish War Veterans of the United States of America, I am happy to express appreciation for this opportunity to present our views in favor of correcting Senate rule XXII along the lines of resolutions which have been passed for many years at the annual conventions of our organization. Following is the resolution passed at our convention last year.

"Whereas the rules of the Senate permit debate unless and until 64 Senators vote to close debate;

"Whereas this rule in practice often degenerates the process of debate into obstruction of a vote by the Senate; and

"Whereas this rule permits filibustering by which a small minority may frustrate the majority of the Senate: Now, therefore, be it

Resolved, That the Jewish War Veterans of the United States of America at 61st annual national convention assembled in Milwaukee, Wis., August 7-12, 1956, do urge the Senate of the United States to adopt a rule which will safeguard debate, yet provide a time certain to bring bills, resolutions, and motions to a vote."

This resolution recognizes the importance of full debate in the Senate.

It equally recognizes the importance of permitting the Senate to vote its will when adequate debate has gone forward to a point where continuation of debate is merely repetitious and carried on only to prevent a vote.

Senate rule XXII as now written, makes it too easy to indulge in unreasonably prolonged discussion on the Senate floor and to prevent the Senate from voting a decision on the matter before it.

Since the resolution of our organization quoted above does not endorse, specifically, any of the measures which you are considering, I can only suggest that you report, favorably, a change in the rule which will provide a fixed time of termination for debate on any Senate procedure which is provided for in the Senate Rules. Thereafter, a vote may be called for on the previous question.

Respectfully submitted.

BERNARD WEITZER.

HOLLYWOOD 38, CALIF., June 3, 1937.

HON. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: Thank you for your letter of May 11. The delay in my reply has been caused by my absence from Los Angeles for several weeks.

As an individual and a damn Yankee, I believe that there is no single Senate rule which should be more zealously guarded than the one protecting the right of members to speak or debate without limitation. It is my private guess that most of the citizens in the various States who support the right-to-work fight would probably agree with me in this stand if only for the reason that it is conceivable that one day Senate rule 22 might save us from the catastrophe which could follow an amendment to the Taft-Hartley Act repealing or invalidating section 14-B.

However, my interest in this subject goes far beyond my particular concern for the right to work. If this rule were to be changed, it is further conceivable that the historic role of the Senate in modifying and restraining momentarily popular surges of democratic enthusiasm might be seriously changed or completely eliminated. If such a situation as this were to come about, much of the usefulness of the upper House would be lost and we might even have in fact—if not in form—a unicameral legislature.

If there is anything further I can do, please let me know. I shall probably be in Washington between June 17 and 20.

Sincerely yours,

DONALD MACLEAN.

DORAN & MANION,
South Bend, Ind., June 25, 1937.

HON. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: Thank you for your invitation to testify before the special subcommittee on Rules and Administration of the Senate now considering proposed amendments to rule XXII.

It was my hope and intention to appear personally and present the enclosed statement, but a series of engagements on the west coast during the month of July will make this impossible.

I therefore hope that you will incorporate the enclosed statement in the record of the subcommittee.

Very sincerely,

CLARENCE MANION.

MEMORANDUM IN OPPOSITION TO PROPOSALS FOR FURTHER LIMITATION OF FREE DEBATE IN THE SENATE BEYOND THE LIMITATIONS NOW PROVIDED FOR IN RULE XXII

Mr. Chairman, I wish to express my opposition to any proposals which would carry the limitations on free debate in the Senate further than the limitations now provided in rule XXII.

"RULE XXII. PRECEDENCE OF MOTIONS

"* * * If at any time a motion, signed by 10 Senators, to bring to a close the debate upon any pending measure is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and 1 hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by an aye-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

"And if that question shall be decided in the affirmative by a two-thirds vote of those voting, then said measure shall be the unfinished business to the exclusion of all other business until disposed of.

"Thereafter no Senator shall be entitled to speak in all more than 1 hour on the pending measure, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order

after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate."

When the Senate rules were revised in 1806, the right to move the "previous question" and thus choke off debate summarily was omitted. Until 1917 every attempt to limit debate failed. Rule XXII was adopted in that year. Under it, 16 Senators at any time can file a motion to cut off the discussion of any pending measure. The motion must be voted on not less than 2 days later. If it is approved by a two-thirds vote, debate will come to an end, after each Member has been given the opportunity to speak for not more than 1 hour on the pending question. When such a closure has been approved, amendments to the bill under consideration can be made only by unanimous consent, and dilatory motions are out of order.

Since rule XXII was adopted, it is inaccurate to speak of "unlimited debate" in the Senate, for the right may be limited at any time by invoking rule XXII. The question before us now is, therefore, whether the Senate should change the rule and make closure easier and speedier.

There are, of course, many ways in which rule XXII could be changed for this purpose. The "previous question" rule of the House of Representatives (rule XVII) could be substituted in toto for Senate Rule XXII; the number of signatures required for the motion under present rule XXII could be reduced; the 1-hour speech limit could be shortened; the vote of a majority of the Senate could be substituted for the present two-thirds vote requirement. All of these suggestions appear to be based on the premise that once a "majority" is set upon the passage of a measure, the "minority" has no longer any right or privilege to delay or impede the imposition of the "majority will."

My opposition to these proposals is not based on a view of the merits or demerits of any particular legislation which may now be before the Senate. I think the question of further limitation on freedom of debate in the Senate ought not to be obscured or prejudiced by a consideration of the effect the proposed changes may or may not have on the speedier enactment of any pending bill. The question should be lifted to a more serious level and considered in the full light of basic principles and philosophies of free speech, the true constitutional function of the Senate, and, finally, in the full light of what American Federal Government has become, as a matter of political fact, in our time.

There is no plainer principle of our constitutional law than this—that the Constitution does not rest upon the "sacred doctrine" of "majority rule." I do not know that any political philosopher has ever offered a solution of the conflict between "majority will" and "minority rights" that will completely satisfy everybody. Struggling with the problem, our Founding Fathers, in drafting the Constitution, departed again and again and again from the "majority" principle. The devices they adopted were designed at least to "slow down" those who, simply because, by a count of votes, they had "one more than half," threatened to ride roughshod over the rights of those who, by a similar count, had, unfortunately, "one less than half." True, a majority can pass ordinary legislation in the House and Senate. True, in every popular government there must come a time when the will of the majority will prevail over the will of the minority. But all through the debates in the Constitutional Convention and all through the Federalist papers we note the constant concern of the Founding Fathers with the perennial problem of free government—how to prevent by written constitutional restraints and limitations the ruthlessness of a temporary majority from impairing the rights of the minority.

Can a majority of the Senate ratify a treaty? Can a majority of the House and Senate override a Presidential veto? Can a majority propose a constitutional amendment? The Constitution says "No." And every one of the provisions of the sacred Bill of Rights is a constant "Thou shalt not" to any majority in Congress, however great. Those, then, who rest their claim for changing rule XXII to sweep aside obnoxious or obstructive minorities, on the "sacred constitutional rule of the majority," are invoking something that does not exist in the deeper philosophy of the Constitution. That philosophy is the other way around—majorities ought to be limited, slowed down, not speeded on their way. The Constitution, in the processes it sets up, assumes over and over again that there should be an appeal from "Philip drunk to Philip sober." It is my conviction that even rule XXII, with its limited restraint upon unlimited debate in the Senate, is of a piece with this basic, underlying, constitutional, political philosophy and should not now be abandoned.

It is clear to students of our constitutional history that the fathers of the Republic in providing for a Congress of two Houses did not design the Senate to be a carbon copy of the House. The very principle of organization in the two Houses is different. The American Republic is a Union of States, and, above all else, the peculiar organization, structure, and functions of the Senate are intended to keep this constitutional fact before us. It is to be expected that the rules of the two Houses would in the course of time come to be different. In 1841 the rules of the House imposed the restraint that no Member should occupy more than 1 hour in debate on any question in the House or in the Committee of the Whole. Indeed, a Member of the Senate, speaking of this House rule at the time, said that it was "the largest limitation upon the freedom of debate which any deliberative assembly ever imposed upon itself, and presents an eminent instance of permanent injury done to free institutions in order to get rid of a temporary annoyance." Thus spoke Senator Thomas Hart Benton, of Missouri, at a time when the Senate had already been maintaining for 35 years its cherished position as the forum of the Republic in which any issue was guaranteed free consideration and could not be smothered by a motion for the previous question nor by an arbitrary time limit on speeches from the floor.

I am not now addressing myself to the peculiar problems of the House with its 435 Members, nor to the question whether the House rules which so drastically cut debate may not be a pragmatic necessity. The House rules, based on House conditions and circumstances, have no relevancy in considering what should be done in the Senate, which the Constitution makes so essentially different from the House in organization, representation, and functions. I am opposing the virtual ending of free debate in the Senate such as is proposed in the measures to smooth the way for swifter, easier cloture under rule XXII because I believe there should be at least one legislative forum still left, at least relatively free for free debate—one forum still free in which a menaced minority can still make its appeal to the sober second thoughts of the people of the States which make up our Federal Union. Once assimilate the rules of the Senate to those of the House in respect of freedom of debate and discussion and you begin to give away one of the main rationalizations of our bicameral system. In fact, if the proponents of the relaxation of rule XXII wish to be completely logical in working from their assumed premise of "the sacred rule of the majority," they should suggest as a necessary inference the end of bicameralism altogether. By their logic, a second House of the National Legislature becomes a silly and useless reduplication, an anachronism in a day when speed seems to have become the national motto. The ancient anecdote relating George Washington's reply to Thomas Jefferson's inquiry into the necessity of bicameralism—that we send legislation from House to Senate for the same reason we pour hot tea into a saucer—to cool it off—is pointless if the Senate, by the proposed change in its most characteristic rule and most distinguishing feature, becomes merely a second House. I would preserve freedom of debate in the Senate even under the restrictions of rule XXII because I would preserve the Senate as it was intended to be.

But I can see a greater issue arising out of the proposed attempt to end whatever remains of the freedom of debate in the Senate. And this issue is something which will be with us always, and in many different forms, long after the fate of any pending legislation today in the Senate is decided. That issue is none other than the issue of free speech, with which I think the basic question of revising rule XXII is so deeply involved.

The Supreme Court, in our day particularly, has gone to great, even perilous lengths in breathing into the Constitution a whole philosophy—moral as well as political—of freedom of speech. The Court feels the slightest attack upon what it calls the "preferred right" of free speech like a wound. I think our attitude toward a revision of rule XXII, which revision, whatever its form, is, at least abstractly, a question of freedom of speech, should be formed by the philosophy of free speech now given to the Nation by the Supreme Court.

Let me quote from a few of the Justices of the Supreme Court. I ask you to consider whether, in the light of the general philosophy of free speech these statements reflect as characteristic of Americanism, we should not also be as cautious as the Supreme Court in sanctioning barriers against free speech as a philosophic principle, in any of its manifestations, whether they be the inflammatory words of a Communist in Union Square or the dull speech of a duller Senator with whom the majority disagrees, and whose dull delay blocks the speed of the legislative machine.

Said Justice Louis D. Brandeis: "If there be time to expose, through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence" (*Whitney v. California*, 274 U. S. 357). Shall a Senator from a sovereign State of this Union have less and less speech and more and more enforced silence—the enforced silence of the previous question?

Said Justice William O. Douglas: "Free speech has occupied an exalted position because of the high service it has given our society. Its protection is essential to the very existence of a democracy. The airing of ideas releases pressures which otherwise might become destructive. When ideas compete in the market for acceptance, full and free discussion even of ideas we hate, encourages the testing of our own prejudices and preconceptions. Full and free discussion helps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart. Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political, philosophical, economic, and racial group amongst us. We have counted on it to keep up from embracing what is cheap or false; we have trusted the commonsense of our people to choose the doctrine true to our genius and to reject the rest. This has been the one outstanding tenet that has made our institutions the symbol of freedom and equality. We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else, feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world" (*Dennis v. United States*, 341 U. S. 494).

This same caution of the Supreme Court in sanctioning curtailment of the very principle of free speech, this same solicitude for the high moral and ethical philosophy which the Court finds behind the political concept of free speech as written into the first amendment, I invoke and appeal to in urging caution in further impairing free debate in the Senate and in urging on you now solicitude, equal to the Supreme Court's, for the rights of minorities. I would not put the Senate of the United States on a level lower than that of the market place wherein, according to Justice Douglas, the free and unlimited interplay of ideas—of all ideas, even those "we hate," will work out our political salvation as a people.

I am unwilling therefore, because of this same basic philosophy, to tamper with rule XXII any further, because, if political enlightenment of the Nation can come from a Communist on a soapbox, untrammelled by the Supreme Court. I would not like to chance it that some degree of enlightenment might not come from a minority Senator exercising his already limited right of free debate on the floor of the Senate. If I am, according to the Supreme Court's philosophy, to "give the benefit of the doubt" to a Dennis or a Foster, I see no reason why I should not do the same for a Norris or a La Follette fighting the ship-arming bill in 1917 or a Talmadge fighting the civil-rights bill in 1957. Shall we have one basic philosophy of free speech for Communists and another for United States Senators? If the personal and political motivations of those who use free speech to destroy the Nation are now, according to the Supreme Court, beyond the pale of judicial scrutiny, I for one would refuse then to scrutinize the personal and political motivations of those who use the limited freedom of debate in the Senate to save the Nation. Nor will I condemn them with the epithet "filibusterer."

For experience teaches how easy it is to smear those who disagree with us and then relying on an epithet, seek legislation to make their further disagreement with me impossible of expression. In 1917 Senator Norris and Senator La Follette in the closing days of the Senate in the short session of Congress spoke long and vehemently against the President's proposal that he be given unrestricted rights to arm merchant vessels of the United States—as a war measure when there was no war—no war declared by Congress as required by the Constitution—no war resolution even asked for by the President. Senator George Norris and Senator Bob La Follette will not be tagged as "reactionaries." And to their dying days they defended what they had done, for they had followed the dictates of their consciences as Senators from two great States in preventing the enactment of legislation their consciences told them was morally, constitutionally, legally wrong. And neither Senator Norris nor Senator La Follette would ever admit that their action constituted a "filibuster."

And I am happy to note that a Member of this body, the junior Senator from Massachusetts, Hon. John F. Kennedy in his recent best-selling book, *Profiles*

of Courage, has hailed both Senator Norris and Senator LaFollette as outstanding men of courage in the long and noble history of the Senate. There come times, as Senator Kennedy has dramatically pointed out, when a man's conscience imposes upon what he considers to be the moral obligation to speak out at such length and with such eloquence as he can command, no matter how great the marshaled opposition to him may be, no matter what the threat of loss, no matter how remote the promise of ultimate victory. When this "still small voice" of conscience calls to a Senator from a sovereign State and he under this moral compulsion on the floor of the Senate asserts the cherished privilege of the Senate—freedom of debate—I for one would not deny him that privilege, nor would I favor a change in rule XXII which would send him home a silenced Senator to the State which sent him forth to speak for her.

In considering the proposed changes in rule XXII, we must, to paraphrase Justice Holmes, remember "what this Government has become" and therefore consider well the wisdom of retaining and strengthening not only the "checks-and-balances" which our Fathers formally wrote into the Constitution, against unlimited government, but also those ancillary restraints which the wisdom of the Senate wrote into its rules so many years ago. Under the Constitution each House is given the right to draw up its own rules of procedure. There is no expressed limitation on this right, but is it conceivable that either House could enact rules of procedure which ran counter to the inner spirit and philosophy of the Constitution itself?

The two most serious threats to the constitutional principle of separation of powers and to the "checks-and-balances" system which were designed to maintain that principle in the interest of freedom are today (1) the enormously increased political power and prestige of the Executive and (2) the disinclination of the Supreme Court to exercise jurisdiction in an ever-widening area of constitutional problems which it calls "political" or "nonjusticiable." In the light of these threats I submit to you that Senate rule XXII has a vital constitutional function to discharge. It is more than a simple rule of legislative procedure. The facts of contemporary political life have made it a constitutional weapon or device of the first magnitude. It is on these grounds also that I oppose its relaxation to permit even greater restrictions on freedom of debate in the Senate.

The American people in mid-20th century are sufficiently sophisticated to understand the force and power of the Executive patronage in its more, as well as in its less, subtle forms. For the time being, at least, they realistically accept it as a fact of life—a condition inevitable in the "Big Government" type of government so dreaded but never completely foreseen by the Founders of the Republic. They are aware of the pressures from the White House that go to shape up the fictitious "majorities" which are said to represent the "voice of the people," before which, under the assumptions of democracy, dissident minorities must humble themselves and give way. We know of what parliamentary majorities are too often composed. We have seen them before as things of "shreds and patches." After all, what inherent sacredness is there in a "majority" as a "majority." The word itself connotes no metaphysical magic. We should like to know the elements, the motivations, the temporary and uncertain alliances, the hushed bargainings behind the "majority" which give it its evanescent life. How shall these be uncovered—brought into the open naked, for what they are worth, unless, as long as there is a chance—even a small chance—and history shows how often popular government has hung upon the slender thread of chance—that a single voice among the minority may pierce the veil of a politically corporate "majority," the Senate rules still bid this voice to be heard?

We need what is left of the ancient tradition of the free forum of the Senate as a check upon the new overbalance of the Executive power. With the great overdevelopment of the Executive power resulting in a vast bureaucracy itself functioning freely under its own rulemaking power little restrained by the courts, there is no longer a sufficient check—a strong enough balance—in the ordinary constitutional provisions. It is precisely here that I suggest to you the renewed value and utility of the free debate privilege of the Senate. This is not the time to water down or slowly drain away that privilege. Free debate in the Senate, even with the limitations now provided in rule XXII, may well be one of the last lines of defense against an executive imbalance which threatens to destroy the Constitution itself.

For we have also witnessed in our time a withdrawal of the Supreme Court from large areas of constitutional law, a virtual abdication of its function as the

final judicial interpreter of constitutional limitations. While deeply solicitous for the right to free speech of Communists, for example, and deeply concerned with the lives, the fortunes, and the sacred honor of those who invoke the fifth amendment privilege against self-incrimination, the Court in other areas is refusing to hear cases involving claimed constitutional rights by others, on the ground that the cases present "political questions" merely and the claimants are relegated to the "forum of public opinion" or to the "ballot box" since they are said to have no "standing in court." Have these people an effective forum in which to assert violations of the Constitution which impair their rights?

Let me cite one of these areas called political or nonjusticiable. Certainly since the case of *Massachusetts v. Mellon* and the allied case of *Frothingham v. Mellon* (262 U. S. 447), it has been legally impossible for a citizen-taxpayer to secure from the courts a determination of the constitutionality of a proposed expenditure of Federal taxes. The Court said the taxpayer showed no right to be heard; and the sovereign State of Massachusetts fared no better in its contention that the proposed expenditure involved a violation of the rights reserved to the States under the 10th article of the Bill of Rights. The Court declared the questions presented were "political" and not "judicial" in character. In days to come, with this judicial trend prevailing, with the doors of the judicial forum thus closed, we may need more and more the free forum of the Senate, the Senate of old with tradition of free debate strengthened, not weakened, a Senate where free debate makes interposition against constitutional violations not a piece of nostalgia but a political reality to be reckoned with. I would oppose a relaxation of rule XXII as proposed.

Proponents of further restriction on the Senate's right of free debate make much of the abuse of the right. Any right may be abused. The possibility of the abuse of a right is the price paid for the recognition of the right. And I had thought it abundantly clear from our history that the abuse of a right is no argument for its abolition. In the long course of Supreme Court decisions in the area of civil rights it has been made clear that the fact that the right of free speech may be abused is the weakest of arguments for its curtailment. I would leave the abuses of the right of free debate in the Senate to be dealt with by the force and pressure of public opinion. I would not further restrict the right.

And I would remind the majorities which would further limit the right of free debate of minorities that many of today's majorities may find themselves among the minorities of tomorrow. Let them think carefully and cautiously about the proposals now before us lest on that tomorrow they find themselves asking in vain for the right they would today destroy.

Because then free debate is so much in keeping with the historic functions of the Senate under the Constitution as the free forum of the sovereign States; because its value and importance to our constitutionally limited government have increased in the light of what American Government has become, I would oppose any changes in rule XXII making it easier or quicker to gag free debate. And as the Supreme Court is so cautious these days about sustaining restrictions on free speech generally, because of the basic philosophy behind the concept, so am I cautious about further limiting free debate in the Senate, for free debate in the Senate is the legislative counterpart of the whole constitutional concept of free speech. It is drawn from the same sources. It is nourished by the same philosophy. It should not now be weakened or mutilated.

Respectfully submitted.

C. M.

STATEMENT OF HOWARD NORMAN MANTEL, ATTORNEY, BROOKLYN, N. Y., ON
SENATE RULE XXII

Mr. Chairman, it is a fundamental principle of representative government that the elected majority may do what it thinks proper within constitutional limits and provided fundamental rights of the minority to be heard and protected are not violated. Under the present provisions of rule XXII, it takes only 33 Senators to prevent the overwhelming majority from closing debate on a pending matter. And for proposals to change the Senate rules, debate can be closed only upon the physical weakening of a minority Member or Members after prolonged filibuster.

No one questions the propriety of the Senate in preserving the right of debate; but debate ceases to be such if there are no effective limits thereon. By that I mean simply that when debate is not used for purposes of discussion or per-

suasion, but as a means of thwarting the will of the majority, it perverts fundamental concepts of due deliberation. The Senate, traditionally, has not employed the technique of moving the previous question (whether, in fact, it could, is another question, beyond the purview of this statement). Instead, it prefers to debate an issue until all Senators have had their say and are content to proceed to action, that is, to vote. Nevertheless, there must be an effective means of stopping debate when discussion becomes a weapon in the hands of the few to forestall all further legislative action until the pending question is recommitment or otherwise dropped.

I feel that present rule XXII does not give fair opportunity to the majority to bring debate to a close. Paragraph (3), subsection (2) of rule XXII should be amended so that an absolute majority of the membership may close debate. This would be a considerably more restrictive requirement than under the previous-question technique of the House, wherein a majority of a quorum may move the question. That is, if 218 Members of the House are present (a quorum), 110 of them could vote the previous question—this out of a total membership of 435. Under the proposal which I recommend, it would take 40 Senators out of 96 to close debate, an absolute majority.

I further suggest that subsection (3) be amended to provide that on proposals involving changes in the Senate rules, a two-thirds vote of the chosen membership, or 64 Senators out of 96, is needed to close debate. The present requirement goes beyond any rational respect for caution and conservative philosophy.

JUNE 14, 1957.

HON. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SIR: The Fort Worth Chapter of Pro America is deeply concerned with the attempt of the special subcommittee of the Senate Committee on Rules and Administration to amend rule XXII so as to limit debate. Pro America represents 300 local women who are unanimously agreed that this new amendment not only is unconstitutional because it interferes with freedom of speech, but it also destroys the only avenue by which a minority group can express itself.

Not having a list of those on this subcommittee, I address you with the hope that you will acquaint the other members of our feeling about this amendment.

Sincerely,

Mrs. R. R. LOWDON,
Secretary, Fort Worth Chapter of Pro America.

MONTCLAIR, N. J., July 12, 1957.

DEAR SENATOR TALMADGE: As the new president of New Jersey Pro-America, I have received various letters, and communications from the outgoing president, Mrs. Horace A. Woodward. Your letter regarding the hearings on the proposed amendments to rule XXII of the Standing Rules of the Senate was among them.

We are fully in accord with the sentiments expressed by our national president, Mrs. Mary Elizabeth Snow, at one of the hearings. She has spoken for Pro-America chapters throughout the country.

Thank you for the good work which you are doing for all of us who believe in the basic freedoms under our constitutional system. It is my hope that free debate, and the rights of the States may be preserved. But unless Congress reasserts its rights and fulfills its obligations, I fail to see how that can be done so long as we have on the highest Court in the land, men who are determined to rewrite our laws and change our form of government.

With best wishes to you, I am,

Sincerely,

ENID H. GRISWOLD.

ROANOKE COLLEGE,
Salem, Va., May 22, 1957.

Senator HERMAN TALMADGE,
Washington, D. C.

DEAR SENATOR: I wish to commend you as chairman of the subcommittee in the Rules Committee which will consider the changes proposed to Rule 22.

The unlimited debate provisions in the Senate rules is the most important

provision in all the procedures of the Senate. As long as there is provision for unlimited debate in the Senate there is no chance for revolution or suppression of ideas in America.

If a disillusioned group of Americans can find one Senator who will champion their views, nothing can be rushed or covered up. That was demonstrated in the Dr. Townsend proposals in old-age pensions some years ago. And none or only one proposal on which there was a so-called filibuster has ever later passed into law.

I have taught political science here for over 30 years, and have watched this matter of the Senate debate with real interest. Usually when men rush something they have something they wish to cover up. As Gamaliel said in the case of Jesus, if he is the Messiah he will succeed, if he is not he will go the way of all the other impostors. So let him have his time.

Respectfully,

JULIUS F. PAURKE,
Associate Professor of Political Science and Alumni Director.

REALPOLITICAL INSTITUTE,
Chicago, Ill., June 18, 1937.

Date: June 17, 1937.

From: Staff.

To: Committee on Rules and Administration, United States Senate.

Re: Proposed change of Senate Rule XXII to limit debate.

Subject: Second statement of staff on this change.

DEAR SIR: The staff of the Realpolitical Institute unanimously declares the proposal to limit debate in the Senate of the United States as against the grain of the development of this great Republic. The Communist conspiracy has proved that we need, not less, but more, freedom of debate in the United States Senate.

The rights of our American citizens were won on the battlefield by men who shed their blood for freedom. Some of you sitting in this room today are descendants of those freedom fighters. Are you willing to abrogate those rights, to betray your ancestors without a thought for what you are surrendering?

It is commonplace that it always is the liberal wing which is conspiring to reduce the freedoms won by the suffering of our forefathers. No less an authority than Leon Trotsky wrote, in his History of the Russian Revolution that liberal principles cannot be enforced without the police power.

As another step toward the police state in America, the proposal is made to limit debate. This is subversion at its camouflaged best. Nations are destroyed when their freedoms are chipped away one by one, until one day they wake up and see the Communist soldier standing on guard outside the window of their home.

The reason for the proposal to limit debate is a simple one. The liberals feel that "reactionaries," that is, Americans who respect the freedoms of their constituents, are taking up too much time on the floor of the Senate to talk about the rights of free Americans. They want to limit this time so that the liberals will have more time to talk about lending money to the Communist nations of Poland, Yugoslavia, and Hungary, more time to plead for the recognition of Red China, more time to gloss over the sufferings of American prisoners in Red Chinese concentration camps. The Realpolitical Institute stands firmly against the proposal to limit debate.

EUSTICE MULLINS, *Director.*

PASADENA, CALIF., July 12, 1937.

HON. HERMAN B. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: Please excuse this belated answer to your general letter of May 10, 1937, where you addressed me as director of the Church League of America at its headquarters in Evanston, Ill., asking for an expression concerning the limitation of debate in the Senate, rule XXII.

While head of the church league (a tax-exempt organization) I was careful about expressing opinions as to legislation which might be construed as lobbying. But now I have retired and am free from such restraint.

I believe that what is known as the filibuster (or rights of filibuster) is a good thing and should be used more than it is for I believe that we could do with a lot less legislation. If more bills were talked to death it might be a good thing for the country.

But the important point is that it gives a certain protection to certain sections of the country whose problems are not understood by other sections and who otherwise would become the victims of ruthless pressure from heavily concentrated political blocs such as that concentrated in cities, particularly New York City.

Consequently I am in favor of the Senate retaining its traditional privilege of extended debate on issues that have organic substance sufficient to arouse such debate.

Truly yours,

GEORGE ROUSSETT.

RESOLUTION

Whereas Senate rule XXII has been in effect in the United States Senate since the birth of this Nation, and said rule permits unlimited debate, which is a fundamental safeguard against too hastily considered legislation; and

Whereas that particular organization, more popularly known as the Sons of the American Revolution, is, in all probability, one of the most, if not the most, patriotic organization in the United States, that said organization was founded and exists totally and completely as a result of the unquestionable loyalty and patriotism of the forefathers of the individual members of Sons of the American Revolution, to the United States of America; and

Whereas the Sons of the American Revolution are indeed proud and honored to play an active role in any undertaking whatsoever necessary to preserve the freedom, liberties, privileges, immunities, and individual rights which their forefathers so valiantly fought and died for; and

Whereas it has become all too obvious that the individuals, or groups of individuals, who have enjoyed these rights and freedoms most, have done the least to preserve them or the democratic form of government which our forefathers so staunchly supported on the field of battle in the years 1775-81; and

Whereas instead of preserving those inalienable rights of individuals, and those rights guaranteed to the several States of these United States by the Constitution of this Nation, certain individuals and minority groups of individuals, motivated by selfish desires such as political and monetary gain, have little by little caused the abolition of these rights and have dictated their own selfish and inconsiderate creeds as so-called laws for this Nation to be governed by; and

Whereas it is all too apparent, and appalling, that the education of these minority groups and individuals, concerning the history of the greatest Nation on earth, the United States of America, has been sadly neglected, and further that these people have no interest whatsoever in the future domestic tranquillity of our Nation: Now, therefore, be it

Resolved by the Tallahassee, Fla., Chapter of the Sons of the American Revolution, That Senate rule XXII, which said rule embraces the filibuster privilege on the floor of the United States Senate, be retained in its exact present form, and that no changes whatsoever be made concerning said rule, and that the secretary of said Tallahassee Chapter of the Sons of the American Revolution is hereby directed to transmit forthwith a true copy of this resolution to each of the following congressional representatives:

Senator Herman B. Talmadge
Senator Richard B. Russell
Senator Spencer J. Holland

Senator George A. Smathers
Representative Robert L. F. Sikes

DAVID A. AVANT, Jr., *President.*

Attested by:

LESTER PATTERSON, *Secretary-Treasurer.*

TALLAHASSEE, FLA., JUNE 28, 1937.

BANNER COUNCIL, No. 67,
SONS AND DAUGHTERS OF LIBERTY,
Inwood, Long Island, June 28, 1937.

Senator HERMAN B. TALMADGE,
United States Senate, Washington, D. C.

DEAR SENATOR TALMADGE: We as an American organization are against the bills pending in the Senate to change Senate rule XXII relating to limitation

348 PROPOSED AMENDMENTS TO RULES OF THE SENATE

of debate. The bill referred to are S. 17, S. 10, S. 21, S. 28, S. 20, S. 30, S. 32. We are in favor of 1949 cloture rule of the Senate which requires an affirmative vote of the total Senate body and not the simple majority vote.

Therefore, we are writing to ask you to vote against these bill, so same can be defeated.

Very truly yours,
[SEAL]

Miss FREDERICA L. BIRD,
Recording Secretary.

FIDELITY COUNCIL, No. 22,
SONS AND DAUGHTERS OF LIBERTY,
Fair Haven, N. J., July 2, 1957.

United States Senator HERMAN E. TALMADGE,
Washington, D. C.

DEAR SIR: Under this date the above council has written Senators Clifford P. Case and H. Alexander Smith to oppose the seven bills pending in the Senate, to change Senate rule XXII; namely, S. 17, S. 10, S. 21, S. 28, S. 20, S. 30, S. 32.

Yours truly,

Mrs. ALMA BAKER,
Recording Secretary.

RIVERSIDE, R. I., June 27, 1957.

SENATOR TALMADGE.

DEAR SIR: The members of Lafayette Council, No. 27, of Riverside, R. I., a unit of the National Council, Sons and Daughters of Liberty, protest the passage of seven bills, now pending in the Senate—S. 17, S. 10, S. 21, S. 28, S. 20, S. 30, and S. 32—and ask that you work to defeat them.

Sincerely,

[SEAL]

AGNES R. KELLY,
Recording Secretary.

OLD GLORY COUNCIL, No. 50,
SONS AND DAUGHTERS OF LIBERTY,
Clearfield, Pa., July 3, 1957.

Senator HERMAN E. TALMADGE:

We, the members of Old Glory Council No. 50, Sons and Daughters of Liberty, Clearfield, Pa., Clearfield County, do hereby object to change of Senate Rule XXII, relating to limitation of debate, bills No. S. R. 17, S. R. 10, S. R. 21, S. R. 28, S. R. 29, S. R. 30, and S. R. 32.

Trusting it will be of some benefit in protesting these bills.

Sincerely and fraternally,

[SEAL]

NANNIE BAILOR,
Recording Secretary, Clearfield, Pa.

PRIDE OF BELLEVILLE COUNCIL No. 215,
SONS AND DAUGHTERS OF LIBERTY,
Nutley, N. J., July 16, 1957.

Senator HERMAN E. TALMADGE.

DEAR SIR: We wish to have the members of this council to go on record as being opposed to the following bills and hope that they are defeated: Senate Resolution 17, Senate Resolution 19, Senate Resolution 21, Senate Resolution 28, Senate Resolution 29, Senate Resolution 30, and Senate Resolution 32.

Fraternally yours,

[SEAL]

Mrs. BESSIE KOHLER,
Recording Secretary.

PRIDE OF MALASKA COUNCIL No. 100,
SONS AND DAUGHTERS OF LIBERTY,
Phillipsburg, N. J., June 21, 1957.

Senator HERMAN E. TALMADGE,
Senate Committee on Rules and Administration.

DEAR SENATOR TALMADGE: I wish to inform you that our council has taken action on the seven bills pending in the Senate to change Senate rule XXII relating to limitation of debate. We are protesting these bills and have written to our Senators, and urging that they be defeated.

Very truly yours,
[SEAL]

RUTH KNEER,
Recording Secretary.

PRIDE OF NEW JERSEY COUNCIL No. 243,
Woodbridge, N. J., June 22, 1957.

Senator HERMAN E. TALMADGE,
Senate Office Building, Washington 25, D. C.

DEAR SENATOR TALMADGE: I am writing to inform you that I, as the recording secretary of the above subordinate council of the Sons and Daughters of Liberty, have under date of June 22, wrote to our two United States Senators from New Jersey asking them to oppose any and all legislation that will effect the present status of Senate rule XXII.

This was done in accordance with a request from our national legislative committee of the Sons and Daughters of Liberty.

Wishing you success in your efforts to prevent any changes in Senate rule XXII, we wish to remain.

Very truly yours,
[SEAL]

EDWARD S. BROOKFIELD,
Recording Secretary.

PRIDE OF THE PARK COUNCIL No. 15,
Asbury Park, N. J., June 28, 1957.

Senator HERMAN E. TALMADGE,
Senate Committee on Rules and Administration.

DEAR SIR: As a patriotic organization we would ask you to use your influence in defeating the seven bills pending in the Senate to change Senate rule XXII relating to limitation of debate.

We are depending on you.

Sincerely yours,
[SEAL]

(Mrs.) MARTHA J. PARKER,
Secretary.

SONS AND DAUGHTERS OF LIBERTY,
Galion, Ohio, June 22, 1957.

Senator HERMAN E. TALMADGE,
Committee on Rules and Administration.

DEAR SIR: In accordance with the instruction from the legislative committee of the National Council, Sons and Daughters of Liberty, I am writing to you asking for your vote against seven bills pending in the Senate to change Senate rule 22 relating to limit of debate. These bills are numbered Senate Resolutions 17, 19, 21, 23, 29, 30, and 32.

In our understanding, the Senate was created as a curb upon hasty action by the House of Representatives. Senators represent States which are equal, not areas of population as in the House. The Senate is the only free parliamentary body left in the world. To stifle freedom of speech on the Senate floor strikes at the fabric of our form of government. Anything that will make it easier to secure controversial legislation by shortening and cutting off debate should be rejected. No good legislation has failed of eventual passage because of prolonged debate, but some bad legislation has been stopped. Therefore, we

of Ohio State Council, Sons and Daughters of Liberty, ask you to protect these bills and help to defeat them.

Fraternally in friendship, patriotism, and integrity.

Mrs. BEATRICE COOVER,
State Secretary.

Approved by State Councilor.
[SEAL]

BETTY MORAN.

TRUE AMERICAN COUNCIL, No. 3,
SONS AND DAUGHTERS OF LIBERTY,
LOUISVILLE, KY., July 10, 1957.

Hon. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SIR: At the regular meeting of True American Council, No. 3, Sons and Daughters of Liberty, held June 28, 1957, by unanimous vote of the members present, I was instructed to write regarding several bills pending in the Senate to change Senate rule XXII, relating to limitation of debate. These bills are Senate Resolutions 17, 19, 21, 28, 29, 30, and 32.

The Senate is the only free parliamentary body left in the world. To stifle freedom of speech on the Senate floor strikes at the fabric of our form of government. We feel that no good legislation has failed of eventual passage because of prolonged debate, but some bad legislation has been stopped.

Trusting that you will do all you can to prevent the passage of these bills.

Very respectfully yours,

GEORGE F. UNSELD, Secretary.

SONS OF UNION VETERANS OF THE CIVIL WAR,
June 24, 1957.

Hon. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR TALMADGE: Your letter to Maj. Gen. U. S. Grant III of June 18 relative to submitting a written statement for introduction into the record of the hearings relative to proposed amendments to rule XXII of the Standing Rules of the Senate pertaining to limitation on debate was referred to our commander in chief, Mr. Fred E. Howe, of Niagara Falls, N. Y.

Commander in Chief Howe is at present traveling and attending our various State conventions and has instructed me to advise you of the following statement of position which has been unanimously approved by our national council of administration:

"The Sons of Union Veterans of the Civil War, a nonprofit, patriotic, and educational organization, composed of descendants of the Union soldiers, sailors, and marines who took part in the Civil War, feels honored at the invitation to comment on the proposed legislation to change Senate rule XXII relative to limitation of debate. However, our order is constrained to recognize that this is a matter entirely within the prerogatives of the Senate, that it is political and, at least to some extent, partisan, and therefore one in which our participation as an organization is prohibited by article IV of our constitution. We are consequently constrained to refrain from comment as such.

Nevertheless, being assured that it is the desire of your committee to be informed of the views of patriotic citizens as far as possible throughout our broad land, and wishing to be helpful as far as we properly can, our commander in chief has asked for the individual opinions of the members of our council of administration and officers, and in no wise a statement of the attitude of the order as a whole, or of the council speaking for the order in anticipation of the national encampment's next meeting.

"There is necessarily no unanimity on the subject in the group of leaders mentioned above. We are mindful of the fact that unlimited debate in the Senate on occasion has prevented undesirable legislation and postponed contentious subjects for further consideration until there was a meeting of the minds. We remember the anecdote of Jefferson at breakfast with President Washington, after the former's return from France, saying that the one thing he did not like about the Constitution was the bicameral organization of the legislature. Whereupon Washington pointed to Jefferson's cup of coffee, much of the contents of which he had poured into his saucer, and asked 'Why did you do that?' Jefferson is

repr to have answered 'To cool it off, of course.' Washington's response was to th. t that 'so we thought the Senate necessary to allow legislation to cool off.'

"On the other hand, we realize that such unlimited debate has on occasion prevented and may again prevent the passage of much needed legislation, it having proven too often impracticable to secure an affirmative vote of two-thirds of all Senators to pass the cloture resolution. In view of the increased load of legislation now requiring prompt action by Congress, especially in our foreign relations and to meet sudden changes in our economy, we believe that such delays may now prove more deleterious to the national welfare than in the past.

"Therefore, we unanimously, as individual citizens having the national interests at heart, are of the opinion that some modification of the present rule XXII would be in the national interest without making it too easy to shut off debate. Having confidence in the attendance of Senators conscientiously opposed to a motion to close debate at the meeting at which the vote is to be taken, we consequently believe that amendment to permit two-thirds of the Senators present and voting to decide the matter after due advance notice (12 or 15 days), but in no case less than a majority of all Senators."

Sincerely yours,

ALBERT O. LAMBERT,
National Secretary-Treasurer.

DR. PIERRE CHEMICAL CO.
Chicago 18, Ill., July 1, 1957.

HON. HERMAN E. TALMADGE,
Senate Office Building, Washington, D. C.

DEAR SENATOR TALMADGE: It is my understanding that the section of the first amendment to the United States Constitution relating to freedom of speech has not, as yet, been repealed, but I would like to know of what value to the people is freedom of speech if it is denied their legislators?

Although its character was somewhat weakened when, under the terms of the 17th amendment, its membership became elected by the people rather than by the State legislatures, still the Senate ranks as the most important remaining segment of our republican form of government. Any attempt to limit debate in the Senate by changing rule XXII is, in my opinion, an attempt to further weaken our republican governmental structure.

I believe that a United States Senator should be entitled to the same rights guaranteed to a Communist traitor and I am therefore completely opposed to any change in Senate rule XXII that would limit to the slightest degree freedom of speech.

Sincerely yours,

ROBERT BENT TAFT.

STATEMENT IN OPPOSITION TO PROPOSED AMENDMENTS TO RULE XXII (RELATING TO CLOTURE), BY WILLIAM M. BEARD, PAST COMMANDER IN CHIEF, SONS OF CONFEDERATE VETERANS, WESTFIELD, N. J.

Gentlemen, I am submitting this statement to this special subcommittee as the representative of the Sons of Confederate Veterans.

The Sons of Confederate Veterans are opposed to the proposed amendments to rule XXII (relating to cloture) for the following reasons:

1. When the United States Constitution was adopted, the framers of that document were careful to provide that arbitrary power should never be lodged in any majority. Each dictator in modern times has claimed that he holds a mandate from the majority. Majority rule is in its essence the doctrine that might makes right and that right is the selfish interest of the strongest. Our Founding Fathers knew and believed that there are human rights to be put beyond the reach of the majorities, mobs, or masters. These human rights include the immemorial rights of Englishmen: the right of personal liberty, personal security, and private property. The right of personal liberty includes the right of free speech, free debate, the right of Senators to express their thoughts and opinions without limitation as to time. The proposed new rule to limit debate imposed by two-thirds of the Senators present and voting, or by a majority of the authorized membership of the Senate would constitute a very serious and unwarranted limitation of the right to debate.

The matters coming before the Senate of the United States are of sufficient moment, that free and unlimited debate should be possible under all circum-

stances unless cloture is imposed by the affirmative vote of two-thirds of the Senators duly chosen and sworn.

The late Senator James A. Reed, of Missouri, stated, "so long as we can keep this forum free, so long as a vigorous and determined minority can prevent passage of a statute, so long this country will be safe, reasonably safe at least, for no great act of treachery can ever be consummated where there are some brave souls to stand in its resistance and to stand to the end * * *."

If you adopt the proposed amendments to rule XXII, you not only strike down the right of the minority to be heard, without limitation of the right of free speech and free debate, you are setting a precedent for changing the rules so that in the future the rules may be changed in an arbitrary, capricious, and unreasonable manner, with the result that debate may not only be limited, but it may be entirely prohibited. This would mean the end of free government. Debate in the "greatest deliberative body in the world" would be either unreasonably limited or prohibited.

I respectfully submit that the proposed change in the rules is not in accord with sound democratic processes. It is a step toward totalitarianism by imposing an unjust and unnecessary limitation upon the rights of the minority.

2. On December 20, 1820, Senator Samuel Foote, of Connecticut, offered a resolution to have the Senate Committee on Public Lands "inquire into the expediency of limiting for a certain period the sale of public lands, to such lands only, as have heretofore been offered for sale, and subject to entry at a minimum price."

This resolution was briefly debated December 30, 1820, by Senators Benton, Foote, and Holmes. The debate was resumed on January 13, 1830. From January 18, 1830, when the great debate got under way, Benton, Holmes, Hayne, Webster, debated the resolution at intervals until it was finally tabled on May 21, 1830.

During this debate, Benton, Webster, Clay, and Calhoun were not limited by any gag rule on debate. Their speeches at times were vehement, they were prolonged and the speakers sought victory for the cause they championed. This debate was only a continuation of the discussions in the Constitutional Convention of 1787 of the issues between Jefferson and Hamilton.

3. In the debates on the civil-rights bill, there should be read into the record the full and complete history of the reconstruction of the South, 1865-77. Not only the Members of the Senate, but the American people need to have their recollections refreshed as to what happened in the South during those 12 tragic years when free Negroes, northern carpetbaggers, and southern scoundrels backed by Federal bayonets were in control of the Southern State governments.

No Senator should vote for the civil-rights bill until he has read *The Tragic Era* by Claude G. Bowers, Houghton, Mifflin Co., 1929.

Before the people of the South are subjected to another reconstruction by the Federal Government, their representatives should have absolute right to unlimited debate in the Senate on a bill, which in its essence, is nothing but a Federal force bill. The present civil-rights bill in its express terms and implications will reconstruct the South more drastically than it was reconstructed or destructed during the tragic 12 years, 1865-77. The civil-rights bill if enacted into law will have more far-reaching and divisive effects than any law enacted by Congress since the end of the War Between the States.

4. Under the Constitution, the right of the several States to regulate their own affairs must remain inviolate. In 1786 Jefferson wrote Madison that in the proposed Union there should be a proper division of powers between Federal and State Governments. Repudiate that principle and our liberties are lost.

Jefferson well said, "When our Government shall be drawn to Washington as the center of all power it will become venal and oppressive."

Chief Justice John Marshall, speaking for the Supreme Court, declared in 1819, "No political dreamer was ever wild enough to think of breaking down the lines which separate the States and of compounding the American people into one common mass."

Andrew Jackson said in his farewell address: "There are those who wish to enlarge the power of the Central Government. Their attempts should be firmly repressed."

Any bill which infringes on or violates the provisions of the 10th amendment to the Constitution of the United States should be subjected to free and unlimited debate.

Among the powers reserved to the States under the 10th amendment is the right to establish qualifications for voting, subject nevertheless, to the limitation

imposed by the 15th amendment which provides that the right of citizens of the United States to vote shall not be denied or abridged * * * by any State on account of race, color, or previous condition of servitude. Any bill which has for its object the establishing of additional Federal qualifications for voting, other than those established by the States, represents an invasion of the rights of the States. Unlimited time, subject only to the rule governing cloture, should be permitted any Senator who wishes to speak on this bill. The present rule relating to cloture should be maintained in its present form and not altered to stifle, limit or gag debate. It is a historical fact that the antislavery movement was strengthened and grew rapidly by reason of the passage of the gag rule shutting off antislavery petitions introduced by John Quincy Adams after 1831 when he became a Member of Congress.

We want every Senator to have unlimited time for debate until cloture as provided by Senate rule XXII is invoked.

5. In the space of 168 years only 22 amendments have been added to the United States Constitution. The Constitution wisely provides in article V that Congress, whenever two-thirds of both Houses, not a majority, shall deem it necessary, shall propose amendments to this Constitution, which amendments must be ratified by the legislatures of three-fourths of the States and not by a majority. The framers were resolved to protect the rights of the minority from any amendments which would alter or abridge rights guaranteed them in the Constitution.

By the same principle the Senate should not amend rule XXII as proposed and thereby abridge the right of the minority to free and unlimited debate.

The proposed change of rule XXII does violence to the spirit, if not the letter, of the Constitution.

For the reasons above stated, the Sons of Confederate Veterans are opposed to the proposed amendments to rule XXII, and we earnestly request and strongly urge that rule XXII be maintained in its present form.

Respectfully submitted.

WILLIAM M. BEARD,
Past Commander in Chief.

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM,
Washington, D. C., July 15, 1957.

Senator JACOB JAVITS,

Chairman, Special Subcommittee of the Senate Committee on Rules and Administration, Senate Office Building, Washington, D. C.

DEAR SENATOR JAVITS: The Women's International League for Peace and Freedom wishes to file a statement on the question of amending rule XXII. We respectfully request your permission to have our statement included in the hearings being conducted at this time.

Respectfully yours,

MRS. ANNALIE STEWART,
Legislative Secretary, United States Section.

STATEMENT OF POSITION OF THE WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, UNITED STATES SECTION, RE REVISION OF SENATE RULE XXII

The United States section of the Women's International League for Peace and Freedom submits herewith its views in support of revision of Senate rule XXII, and urges your subcommittee to make a speedy report recommending extensive changes in the rule.

The rule as presently written does violence to the legitimate right of the majority to perform its legislative function, thus breeding disrespect for the democratic process. In a period of serious challenge to the basic validity of democratic procedures, the frustration and nullification of the will of the majority arising from the filibuster place formidable weapons in the hands of those who deny that democracy can function effectively.

As we see it, the democratic process involves two correlative principles—scrupulous regard for the rights of the minority, and eventual decision according to the will of the majority. As an organization committed to both principles, the Women's International League for Peace and Freedom could never support a proposal which would enable the majority to ride roughshod over the minority, or, on the other hand, would allow action to be permanently blocked where a majority has determined that it is required.

The present rule, under which filibusters may be ended only if 64 Senators vote in favor of cloture, has repeatedly forced the United States Senate to sit for weeks in frustrated inactivity while a few stubborn Senators read recipes or other trivia solely for the purpose of preventing a vote on an issue which everyone knew would command the support of the majority of the Senate if only it could be brought to a vote. Such mockery of the legislative process destroys the dignity of the Senate and subjects it to contempt and ridicule. If the Senate is to merit its designation as the "greatest deliberate assembly in the world," this condition must not be perpetuated. A workable cloture rule would do much to encourage real discussion of the issues and discourage irrelevancy in debate.

Several of the proposals for revision of Senate rule XXII, while preserving full freedom of debate would also safeguard the right of the majority to act once full consideration had been given to the proposal before the Senate.

Senate Resolution 17 provides a cloture rule which serves these ends. The extended discussion sometimes required to inform, educate, and arouse not only the Senate itself, but the people as a whole would be permitted by the provision that on the first attempt to invoke cloture a two-thirds vote of those present and voting after a quorum call would be required. Not until after an additional 15 days of full discussion would cloture be possible by the affirmative vote of a simple majority of those Senators duly elected and sworn (namely, 49). The proposed resolution also preserves the present procedure, under which, after a vote in favor of cloture, each Senator is permitted an additional hour of debate. Taking into consideration the fact that no cloture petition would be likely to command the support of the 16 Senators required to initiate it until there had been substantial debate, Senate Resolution 17 would, in actual practice, limit debate only after 4 to 5 weeks of discussion.

Senate Resolution 17 is a moderate approach to the problem which this subcommittee is considering. A study of the cloture votes between the passage of the 1917 rule and the present session of the Senate indicates that cloture was invoked only 5 of the 22 occasions where a vote was taken. If only 49 rather than 64 votes had been required, cloture would have been invoked on 5 additional occasions, while in 12 out of the 22 votes it would have failed. Thus there is little reason to fear that under Senate Resolution 17 cloture would be frequent.

The study of previous cloture votes also indicates that there would be no serious danger to minority rights should the Senate see fit to adopt the more liberal provision of Senate Resolution 21, introduced by Senator Morse, under which cloture could be invoked by a simple majority of those present and voting. This organization would welcome such revision of Senate rule XXII, particularly if accompanied by the imposition of a reasonable time limit before cloture could be invoked.

We urge also that the revision of the rule include a deletion of the present section 3 of rule XXII—a section which we believe to be not only unconstitutional, but which is additionally an undemocratic attempt to curtail freedom of action of subsequent Senates. We believe that the small concession on the number of votes required for cloture would not justify support of restrictions upon changing Senate rules in future Congresses, and hence we vigorously oppose Senate Resolution 30, introduced by Senators Knowland and Johnson.

The present consideration of civil-rights legislation by the Senate points up the necessity for revision of rule XXII. Eventual passage in some form of this legislation—if, indeed, this should occur—would in no wise obviate the necessity for change in the rule. Rules of legislative procedure in a democracy should not permit that dictatorship by the minority which now obtains under Senate rule XXII. We urge this subcommittee to recommend changes to the end that majority rule, under reasonable safeguards for the rights of the minority, may be restored in the United States Senate.

STATEMENT OF CHARLES F. ROBERTSON, REPRESENTING THE AMERICAN LEAGUE AGAINST COMMUNISM, LOS ANGELES, CALIF., ON PROPOSED AMENDMENTS TO SENATE STANDING RULE NO. XXII

I have been authorized by the duly constituted authorities of the American League Against Communism to go on record as opposed to any change in the rules involving unlimited debate in the United States Senate for the following reasons:

1. It is my belief that it was the original intention of the Founding Fathers that the United States Senate served as the great insulation between quickly aroused passions and the Constitution.

2. The traditional system of checks and balances has been made so much safer by the preservation of unlimited debate in the United States Senate.

3. At this very moment millions of Americans believe that the Supreme Court is attempting to assume more authority over our personal lives than was intended by those who framed the Constitution. The preservation of the right of unlimited debate could very likely serve to protect our people and our State governments against an intemperate invasion of States rights and personal rights.

4. The subtle tricks of treason are as complex as the study of geology or chess. The average humble American citizen cannot grasp the full danger of communism at first glance. The Marxist doctrine is now being promoted in the United States through the instrumentality of 400 organizations with as many different names. Most of the names of these organizations are so subtle and deceptive that innocent people frequently join them without realizing their ultimate purpose. A situation might develop, and God forbid that it should, in the United States where the only way the American people could be enlightened concerning subtle Marxist legislation would be for a handful of enlightened patriots to debate the subject at great length until their colleagues and Nation were sufficiently enlightened and informed. Occasionally propaganda can be so manipulated and pyramided that the passions of the populace, and even the men and women in Government, can be so mobilized that the liberty of an innocent minority can be menaced. The right of unlimited debate safeguards the liberty of such a minority. It so happens that the white people of the South are today being made the victims of propaganda pressures, which if not curbed or corrected by well-publicized truth could make of this white minority the most persecuted minority in the history of our Nation.

Attached herewith is a copy of the names of the 400 organizations promoting Marxism within the United States.

(The list of organizations referred to may be found in the subcommittee files.)

STATEMENT OF AL HARTNETT, SECRETARY-TREASURER, INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL-CIO, ON SENATE RULE XXII

Mr. Chairman, my name is Al Hartnett. I am secretary-treasurer of the International Union of Electrical, Radio, and Machine Workers, AFL-CIO, and chairman of the IUE civil rights committee. I am submitting this statement on behalf of the president of our international union, James B. Carey, the members of the union, and myself.

The membership of this union adopted the policy of asking for a change in Senate Rule XXII on Tuesday, December 5, 1950, in a resolution which calls for "the freedom of Congress from antidemocratic minority control, delay, and hidden votes by repealing the Wherry amendment, requiring 64 votes to limit debate" and also by numerous resolutions since that time.

I appreciate this opportunity to submit our statement and I am mindful of the courtesy of the Senate in allowing us to present our views on rules which the Senate itself adopts.

We have always been a union that has spoken plainly, and I will come directly to the heart of the matter. The issue here is whether or not there shall be majority rule. The President of the United States, the Senate, the House, all State and municipal bodies are elected by majority vote. This is the approved and established way of life in America. No one questions that this is a democratic procedure. Yet, we are here today making an appeal that this majority be enabled to operate in an orderly and democratic manner and in the best interest of all of the citizens.

To a logically minded person, it is almost incomprehensible that after a majority has been elected, a minority should be able to defeat its will. Yet, this is exactly what Senate Rule XXII does. It calls for a vote of 64 Senators before debate can be ended. "Debate" is a polite word for a filibuster. Thus, any 33 Senators, so determined, can bring to a standstill the senior legislative body of America.

Since the adoption of the Wherry amendment it has never happened that 64 Senators have voted for cloture. We think it is reasonable to assume that they never will.

We see no reason why this vote on cloture should be treated differently from other rules of parliamentary procedure. It takes only a two-thirds vote of those Senators present to expel a Member of the Senate, only a two-thirds vote of those present is needed to impeach the President of the United States. The requirement to override a Presidential veto is only two-thirds of those present and voting, and the same applies to proposing constitutional amendments. It takes only a two-thirds vote of those present and voting to ratify a treaty which could mean eventual war—and in these days, such a war might mean the end of civilization.

If these matters of the first magnitude require only a two-thirds vote of those Senators present and voting, what possible justification is there for demanding a vote of two-thirds of the Senators duly chosen and sworn, which in a full Senate means 64, for cloture?

Let me state right here that we are for full debate on any and all issues. We support the right of minorities to express their views and we actively encourage them to do so. However, there is a vast difference between honest debate to express beliefs and prolonged delay for the specific purpose of killing a bill.

This is a reasonable statement to which fair-minded men will agree. Those who oppose changing rule XXII for the purpose of filibuster with the avowed purpose of preventing a vote must acknowledge that they are against majority rule, which is the accepted determination in America.

It is no secret that the opponents to a change in rule XXII are motivated by their desire to stop civil-rights legislation. With the civil-rights bill now on the Senate Calendar, it is openly stated that there will be a filibuster against it. To us, this is a declaration of anarchy. It is the desire of the majority to pass this legislation. Yet, this willful minority is determined that the majority shall not have its way. This despite the fact that the Senators on both sides were elected on platforms assuring civil rights to all.

There are many resolutions pending before the committee which go a long way toward meeting our objectives. We see merit in Senate Resolution 21, introduced by Senator Morse, and also merit in Senate Resolution 17, introduced by Paul Douglas and 14 other Senators.

We do not presume to be experts in determining just how long is the proper time for debate. It is our belief that a satisfactory compromise can be reached which both sides could support if they are interested in seeing that the Senate can function.

I am aware that you have these various resolutions before you, so I will not go into them in detail. We are not presuming to urge that you adopt a specific resolution but rather that you see that the minority has adequate time to express their views and still make sure that there is majority vote.

Throughout this troubled world, the Voice of America is a voice crying for freedom. We point with horror to Hungary, believing that the will of the majority has been suppressed. We view East Germany in the same light, as well as the rest of the satellite countries. We condemn Russia, stating flatly that it has a totalitarian regime; that it does not respond to the will of the people. In other countries we condemn minority suppression of whatever sort.

We can go a long way toward cleaning our own house by amending rule XXII. In this manner we will have a better chance of calling upon all countries to let there be a true expression of their citizens' desires.

Surely, no one can deny that rule XXII as it now stands is an excellent basis for anti-American propaganda. Let's take this weapon out of their hands and make the Senate what it is supposed to be—a reflection of the wishes of the majority of American citizens.

Both political parties have cried it is time for a change. I think it is time that the Senate heeded this cry and changed rule XXII so that the mandate of the majority of Americans can be effected.

STATEMENT OF GEORGE C. WALLACE, JUDGE, THIRD JUDICIAL CIRCUIT OF ALABAMA, TO SENATE RULES COMMITTEE ON PENDING RULES CHANGE PROPOSALS, JULY 16, 1957

I am opposed to the several resolutions submitted for consideration by this committee that would limit debate in the greatest deliberative body in the world, the United States Senate. I am judge of the Third Judicial Circuit of Alabama, and was elected by the Alabama delegation to the recent Democratic National Convention as their representative on the platform committee.

I quote in the beginning from the Saturday Evening Post of January 12, 1957, an editorial of that publication that is on public record in favor of civil-

rights legislation: "Despite all the talk about whether the Senate is a continuing body or whether it is a new body, with the right to make new rules every time it meets, the essential issue is whether or not a majority in Congress shall be able to force into law proposals which are not accepted as valid by a considerable number of States." The late Senator James Reed, fiery Democrat of Missouri, might well have settled the argument when he said many years ago:

"Strike down this safeguard of public discussion, apply the gag, and imagine if you please, that it is applied only to pass good measures, only to accomplish the virtuous and the wise and the holy, only to bring the thing of rectitude; imagine that if you please. He is a fool, he is every kind of a fool that has ever cursed the earth or cursed himself, who thinks that any power will always be used wisely and justly. Why should there not be some place in this country where the virtues or the inequities of proposed legislation could be exposed without gag, without rule, without limit, some place where every public act must come under the surveillance of men who have complete freedom of speech?"

The Constitution of the United States provided in article 1, section 3, paragraph 1, that the Senate of the United States shall be composed of "two Senators from each State." Although many States have populations in the millions, many others do not, and the voice of Nevada, in the United States Senate, is as powerful as the voice of the Empire State. This was the intention of those who drafted and ratified the Constitution, and as for further insurance that no State might be outvoted by another State in the Senate, in article V we find "that no State without its consent shall be deprived of its equal suffrage in the Senate." Yet one of the effects of the proposed rules change is that a certain number of Senators can and will deprive the Senators from other sovereign States of their right to discuss freely, and without limitation, matters before the Senate that affect the very peace and tranquility of their States.

Any one of the resolutions adopted limiting debate would be a rule limiting the voice of the States; all of this because there are those who shout majority rule shall and must prevail in the Senate. The founders of the Nation, those who drafted and ratified the Constitution, did not subscribe to any such theory. If they had so subscribed to such a theory, then there would never have been any equal representation in the Senate of the respective States, regardless of population. If those who raise the hue and cry about majority rule are successful in limiting the voice of the States, will they then say we must limit the vote of the States? I submit that such would eventually be the recommendations of these liberal organizations that are advocating restriction of debate in the United States Senate. I submit that whenever it suits their whim and fancy they will advocate:

Ratification of treaties with foreign nations by majority vote, and not by the required two-thirds;

Majority approval of a constitutional amendment by the Senate instead of two-thirds vote;

Majority of States only in ratification of a constitutional amendment instead of the three-fourths now required.

The proponents of certain legislation and certain proponents of the rule change say "the end justifies the means." When we degenerate in this country to the acceptance of such theory of government, then the civil rights of no individual, regardless of color, race, creed, or national ancestry will be safe. The prime examples of governments that followed such theories that "the end justifies the means" were Fascist Italy, Nazi Germany, and Communist Russia. There was no such thing as unlimited free debate in those governments that have been swept from the face of the earth, and there is no such thing as unlimited debate in Russia. The Senate of the United States is the only place in our Government where the States have a full voice. Members of the House of Representatives represent only a portion of the people and of the land area of a State; the Chief Executive has no direct responsibility to the States; the Supreme Court is isolated from the States; therefore, the change of Senate rules to allow limitation of debate upon a simple majority vote will be one more step in the direction of relegating the States to mere administrative agencies, and I submit that the change of Senate rules now proposed will sound the death knell to local government, not only in the South but all over the Nation.

People in Alabama believe in constitutional government, and they plead for freedom of debate. They desire to have their representation in the Senate speak freely and without restriction. They know the voice of their Senators in the American Senate is really the voice of their State. We sometimes are perplexed in Alabama and the South when we see certain branches of our Government go

to utter extremes to protect the freedom of speech of those who hate the United States and would destroy this Nation in any manner available, while on the other hand we find others doing all within their power to stifle the voices of those who have always loved America, and who want to keep her free.

We are convinced that the Constitution of the United States intended for free debate to be one of the liberties guaranteed. The Constitution of the United States was freely debated through unlimited debate before it was ratified by the States. Free debate in the Senate is a part of the American system that should not be thrown aside because certain liberal groups desire certain legislation at this time.

If this committee will reflect back over the years, as I am sure you have, you will find that no good legislation was defeated because of unlimited debate, although I am aware of the differences of opinion present on this committee regarding certain legislation. However, the only bills not passed because of unrestricted debate were the force bill, 1890-91; the armed ship bill, 1917; antilynch bills, 1922, 1935, and 1937; antipoll-tax bills, 1942, 1941, 1946, and 1948; and FEPC, 1946. These bills, with the exception of one, the armed ship bill, was aimed at one section of the Nation, the South. The passage of any of these bills, aimed at the South, would have brought an end to constitutional government in the country, because the Congress does not have the right to exceed the powers delegated to it by the Constitution.

Unlimited debate is the greatest protection minority groups have in this country; yet the great political impetus given to this movement to amend the Senate rules comes from certain minority groups in this country who would use any means in order to acquire their full aims. Orderly government, practiced by set rules and law, is the greatest protection the minority groups in this country have. If orderly constitutional government comes to an end in this country through changing the rules of the game in the middle of the game, these same minority groups will rue the day they ever instituted the rules change movement. Therefore, I feel that I can safely say, for I am thoroughly convinced in my mind, that the fight that southerners are leading against the Senate rules change is in reality a fight in favor of minority groups in this country. Change the rules of this United States Senate where just a majority may impose its will upon the minority, and we will find some day some of these minority groups clamoring for these changes crushed under the heel of the majority. Our system of government protects minority groups instead of crushing them. We in the South are a minority group, and I feel that some day the majority of the American people will thank with open hearts the fight that this militant minority is making to restore sanity and normalcy to the American governmental scene, and against changing the unlimited debate rule that has made the American Senate the greatest deliberative body in the world.

Although I am fully aware that the question before this committee is a procedural one, or we might say, in layman's language, a technical question, however, I think it proper and befitting to say briefly what the attitude of the people of Alabama is toward the proposed rules change. In my considered opinion and judgment, the overwhelmingly majority of our people is seething with indignation at the time the Congress is spending upon legislation and proposals aimed at the South. Now, regardless of what some members of the committee might say as to whether or not the rules change is aimed at the South, there is no way that I can be convinced, nor any other Alabamian, that the rules change proposal is not for the purpose of passing punitive and spite legislation against white southerners. You say that this legislation, the so-called civil-rights bill, should pass because you want to help minority groups obtain their rightful privileges under the law, and you say further, but that I dispute, that they are not getting due process and equal protection of the laws. The people of Alabama consider this proposed rule change as a punitive measure, and when you change the rules of the Senate you will be taking another step in the direction toward the point of no return for the minority groups you seek to help. The point of no return will be reached with the southern Negro loses the good will of the southern white man. Thank God this has not happened yet, for the southern white man is patient and he is hopeful that the majority of the southern Negroes will realize, before it is too late, that many who pose as their friends are really interested only in their votes. Should the Senate change the rules of this body, if by so doing it will agitate a whole section of the Nation to the point of endangering the peaceable and friendly relations of the two races, or is that the subtle purpose behind the whole movement? I do not mean to say that any Member of the United States Senate is aware that such is the

purpose of the movement, but I believe that there are sinister forces in this country that desire to see the peace and tranquillity now prevailing in the South to be no more.

I am glad that I as a circuit judge, have a reputation among the Negro people of my circuit as being fair and honest in my dealings with them. I hold my office by vote of the people; I have never made public utterance derogatory against Negro people, nor any of God's children, and I do not ever intend to do so. I am glad to report to you that it is politically inexpedient in my section to make a political speech inciting racial hatreds and enmities, and I pray that it will always be the case. If the time comes when this is not the case it will be because the "do-gooders" and politicians from other sections have meddled until the patience of our people is exhausted. A change in the rules of the Senate will be looked upon by our people as being continued warfare against southern people. Our feelings alternate between that of anger, hurt, and disgust at the invective heaped upon us regarding our relations with the minority group. This we do know: That we have extended the hand of compassion to the Negro people more than the people of any other section have. Our relations have been good; we have lived together in peace and harmony. We, together, have worked through our leadership in political life to throw off the shackles of economic discriminations shackled upon us for the past 100 years, by the very sections of the Nation that cry "discriminations." We know that discriminatory freight rates, Pittsburgh plus, and other artificial restrictions imposed upon us by the East and Midwest relegated our people to an agricultural economy with not the proper balance of industry. As a result, our people did not have the income or the industrial-job opportunities of other sections, and as a further result, our white and Negro people did not have their fair share of educational opportunities, health advantages, and material comforts, all because of northern and midwestern discrimination. Is it any wonder we decry the hypocrisy in the matter? We at least know that we preach and practice the same system, while in other sections of the Nation one system is preached and another system is practiced. The change in the rules of the Senate, the civil-rights organization say, will destroy the sinful, immoral, and irreligious system of separation of the races. Our system is not sinful, immoral, or irreligious, because our system is not based upon hatred, ill will, or malice, but based upon what we believe in our hearts to be for the best interest of both the Negro and the white man, and although I am not a student of theology, I know that there is nothing irreligious about any system, whether it be political, social, or economic, based upon the firm foundation of best interest.

The present Senate rules have preserved constitutional government. Should they now be changed because of pressure groups, in order to pass legislation that will—

1. Abolish trial by jury in civil rights cases, the most fundamental of civil rights.
2. Take over law enforcement of local government.
3. Destroy local government in this country.
4. Take over the electoral processes of the States by the Federal Government.
5. Empower the Civil Rights Commission with blanket jurisdiction over the everyday lives of American citizens.
6. Destroy the laudable rule of comity heretofore recognized in American jurisprudence.
7. Make all Americans fear a knock on the door at night.
8. Make judicial dictators of Federal judges.
9. Bring about government by contempt.
10. Relegate the States to mere administrative agencies.
11. Indict a whole people as not worthy of their oaths.

In conclusion let me say that I desire to see peaceful relations among our people. I do not desire to see the southern white man and Negro drift apart because of the actions now being taken by all branches of the Federal Government. We have the problem—you always have the solution, so you say. We are sincere in our desire to live in peace and harmony. Do not compound our problem. You will do this if you at this time vote to change the rules of the United States Senate.

PRIDE OF BOONTON COUNCIL No. 103,
SONS AND DAUGHTERS OF LIBERTY,
Boonton, N. J., July 31, 1957.

Senator HERMAN E. TALMADGE,
Senate Committee on Rules and Administration.

DEAR SIR: As a patriotic group of American citizens, may we ask you to use your influence in defeating the bills limiting debate in the Senate, namely, Senate Resolution 17, Senate Resolution 19, Senate Resolution 21, Senate Resolution 28, Senate Resolution 29, Senate Resolution 30, and Senate Resolution 32. We are all interested in these bills and should like to see the Senate have the power to debate on legislation, and we are so writing our Senators.

Thanking you for any action favorable to our views, we remain
Very truly yours,

[SEAL]

Mrs. ETHEL M. BAKER, SECRETARY.

EXHIBIT 3

LIST OF OTHER INDIVIDUALS EXPRESSING OPINION ON PROPOSED CHANGES IN RULE XXII IN LETTERS AND TELEGRAMS TO THE SUBCOMMITTEE

Following is a letter dated May 10, 1957, from Senator Herman E. Talmadge to former Vice President John Nance Garner, together with Mr. Garner's reply:

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
May 10, 1957.

HON. JOHN NANCE GARNER,
Uvalde, Tex.

DEAR MR. GARNER: The Senate Committee on Rules and Administration has named a special subcommittee to take testimony on seven proposals pending before it to change Senate rule XXII relating to limitation of debate.

I have been named to that subcommittee and, because I consider the question of free debate in the Senate to be a matter of fundamental importance to the maintenance of constitutional government in this country, I have insisted that the hearings be thorough and that the views of the "grassroots" citizens of this Nation be determined. Toward that end, I have served notice that I intend to see that all patriotic, non-Communist organizations with national memberships and a number of men in public life such as yourself who are conversant with this and related issues are invited to express their views.

While no date has been set for the beginning of these hearings, the subcommittee has agreed that they will be continued until all interested parties have the opportunity to be heard. It is my hope that you will wish and be able to participate and I shall look forward to hearing from you at your earliest convenience.

With every good wish, I am

Sincerely,

HERMAN E. TALMADGE.

DEAR SENATOR TALMADGE: I favor free and unlimited debate in the Senate.
Sincerely,

JOHN N. GARNER.

MAY 15, 1957.

The following persons, either spontaneously or in response to letters from the subcommittee (similar to the above), have expressed opposition to the proposed change in rule XXII:

Miss Isabel L. Adams, 875 San Ysidro Road, Santa Barbara, Calif.	Edward Bates, 1035 West 51st Street, Los Angeles, Calif.
Mr. and Mrs. Nye Adams, 4018 Bell Street, Kansas City, Mo.	Mrs. Carl H. Baumgarten, 4613 Cass Street, Omaha, Nebr.
Mrs. Florence Bassler, Chicago, Ill. (postmarked).	Mrs. Eldora W. Belmont, 1836 Crenshaw Boulevard, Los Angeles, Calif.

- Miss Catherine A. Berchom, 401 Fullerton Parkway, Chicago, Ill.
 The Grover Bissen family, 216 Poplar Street, Onalaska, Wis.
 Mr. and Mrs. F. W. Black, Kansas City, Mo. (postmarked).
 Mrs. Elizabeth Bollhaner, 1827 Meyer Avenue, Norwood, Ohio
 T. J. Boner, 805 East Water Street, Pontiac, Ill.
 Mrs. J. Breen, 7 Derby Road, Hicksville, N. Y.
 Mrs. Katherine Bryan, 2434 West Greenleaf Ave., Chicago, Ill.
 Joseph Bryne, 20 West 45th Street, New York, N. Y.
 Brian Brown, P. E. Devine, Norbert Kusch, Sebastian Sollecito, Mrs. Anna Edlund, Mrs. Emma Gustafson, Mrs. Dorothea Salto, 4903 North Ravenswood, Chicago, Ill.
 Mrs. Edna S. Brown, Rural Route No. 2, Box 36, Elgin, Ill.
 Mrs. J. W. Brown, Jr., 512 Mesita Avenue, El Paso, Tex.
 Walter L. Brown, Big Sandy, Mont.
 Paul S. Bruckner, 151 Candler Avenue, Highland Park, Mich.
 Miss Alma Bump, 436 Russell Street, Baraboo, Wis.
 Mrs. Ethel Bussong, Chicago, Ill. (No address; telegram.)
 Mrs. Keith Campbell, 221 East Walton Place, Chicago, Ill.
 Joseph W. Carman, Canajoharie, N. Y.
 Mr. and Mrs. Archie Cartright, Route No. 3, Wisconsin Dells, Wis.
 Mr. and Mrs. George E. Clarke, 5324 Ferdinand Street, Chicago, Ill.
 Mrs. Mary C. Clausen, 6224 North Cicero Avenue, Chicago, Ill.
 Kenneth Clinton, Mrs. Romaine Clinton, Charles Grosvenor, Mrs. Louise Grosvenor, 850 Park Avenue, New York, N. Y.
 Roger C. Colburn, 1336 East Valley Road, Santa Barbara, Calif.
 Mrs. Florence Reed Cook, 156 Elkay Drive, Eugene, Oreg.
 Claude S. Corson, 17 Grant Street, Mount Holly, N. J.
 Mrs. Betty E. Covey, Box 43, Crozet, Va.
 Miss Ruth E. Croft, 1006 Asbury Avenue, Evanston, Ill.
 Mrs. John W. Daniel, 2630 Centenary, Houston, Tex.
 Miss Charlotte M. Davis, Miss Dorothy Davis, Miss Marjorie Davis, Mrs. Charles Davis, 223 Gale Avenue, River Forest, Ill.
 C. T. Davis, 2806 Boyer Avenue, Seattle, Wash.
 Miss Elsie Day, 4133 North Hermitage Avenue, Chicago, Ill.
 Merritt H. Dement, 708 Hinman Avenue, Evanston, Ill.
 Mrs. Ronda Devlyn, 6147 South Monticor Avenue, Chicago, Ill.
 Bert Clement Dietrich, 336 Central Avenue, Wilmette, Ill.
 Mrs. Richard M. Dilworth, 730 South County Line Road, Hinsdale, Ill.
 Mrs. R. Downing, 2974 Foothill Boulevard, Grants Pass, Oreg.
 Miss May Dunleavy, 1019 East 40th Street, Brooklyn, N. Y.
 Mrs. Inez Elliott, 1209 East Washington, Pasadena, Calif.
 Mrs. B. G. Fout, 2424 West 34th Place, Chicago, Ill.
 Felix A. Gielicz, 8205 Second Avenue, Inglewood, Calif.
 Mrs. Edward A. Gilbert, 1405 School House Road, Santa Barbara, Calif.
 Mr. and Mrs. John Gleeson, 14 Metropolitan Oval, New York, N. Y.
 E. H. Gora, 3779 East Pulaski Avenue, Cudahy, Wis.
 Mrs. J. Robert Griffin, Fort Worth, Tex. (postmarked)
 Mr. and Mrs. John B. Hackler, 1109 Park Avenue, Pekin, Ill.
 Mrs. Verna J. Harris, 1338 North Edgemont, Los Angeles, Calif.
 Mrs. Edward Hawkins, 145 Idabelle Avenue, Wheeling, W. Va.
 Mrs. Phoebe J. Heavy, 6255 North Leona, Chicago, Ill.
 Charles A. Herfurth, 322 Melrose Place, Centralia, Ill.
 Miss Jo Hindman, 8920 Second Avenue, Inglewood, Calif.
 Mrs. A. C. Hobble, 600 Blacker, El Paso, Tex.
 Mrs. Daisy A. Horstmann, Morristown, N. J. (postmarked).
 Mr. and Mrs. J. H. Hummel, Box 25, Flora, Ind.
 Mrs. John S. Inman, 2600 Forest Boulevard, Jacksonville, Fla.
 Mr. and Mrs. Merrell C. Jasper, 526 East Ellis Avenue, Inglewood, Calif.
 Miss Lucretia Jenkins, Miss Mary Dalton, Miss Lucile Farry, Marguerite Bennett, Washington, D. C. (postmarked).
 Mrs. Helen B. Jones, Chicago, Ill. (No address; telegram.)
 Miss Gertrude M. Kapust, 2457 North Nordica Avenue, Chicago, Ill.
 Mrs. Charles Kimmell, 304 South Washington, Butte, Mont.
 Mrs. Ralph W. Kolkmeier, 2552 Madison Road, Cincinnati, Ohio
 Mrs. Frances Bolton Korthauer, 2641 Dartmoor Road, Cleveland Heights, Ohio
 Mrs. Harvey S. Lawrence, 205 South Clinton Street, Mulberry, Ind.
 Frank G. Levy, 1912 Sherman Street, Evanston, Ill.
 Miss Loris L. Lewis, Huntington-Sheraton Hotel, Pasadena, Calif.
 Joseph H. Ley, Plainview, Minn.

- Mrs. Eleanor Jewett Lundburg, Ripple Lodge, Long Lake, R. F. D. No. 2, Traverse City, Mich.
 Erling H. Lunde, 6708 North Olympia Drive, Chicago, Ill.
 Mrs. E. McKenna, 975 Tyrus Court, East Meadow, N. Y.
 Col. Garfield L. McKinney, United States Army (Retired), Lake Ariel, Pa.
 Miss Imogen McMurtry, 320 Seventh Street, Marysville, Calif.
 Charles A. Macauley, 1150 Griswold Street, Detroit, Mich.
 Miss Lucille H. Macauley, 1415 Parker Avenue, Detroit, Mich.
 Dr. and Mrs. Howard Marks, 1433 Cherry Street, Huntington, Ind.
 Miss Oma F. Marlin, 4800 Jefferson, Kansas City, Mo.
 Mrs. Otto W. G. Marquard, 15 Burnham Avenue, Roslyn Heights, N. Y.
 Member, Abraham Lincoln Club, 605 East Water Street, Pontiac, Ill.
 Mrs. J. A. Miller, 4020 the Paseo, Kansas City, Mo.
 Mrs. L. B. Monasmith, 1910 Harvard Avenue, Rockford, Ill.
 Mrs. Ella Monreal, 2405 Domington Drive, Cleveland Heights, Ohio.
 Mrs. Edith H. Moore, Crozet, Va.
 Miss Jeannette P. Moran, Patton, Calif.
 Mrs. Mary F. Moriarity, 325 West 82d Street, New York, N. Y.
 Mr. and Mrs. Quintin Neal, 1516 Cleveland, Chicago, Ill.
 Mrs. Arthur Nordquist, 117 North Rockford Avenue, Rockford, Ill.
 Mrs. C. Jos. Nowak, 15 St. Pauls Road South, Hempstead, N. Y.
 Mrs. James J. O'Connor, 10915 White Oak Avenue, Granada Hills, Calif.
 R. C. Olson, 5906 West Ohio Street, Chicago, Ill.
 Mrs. Europa D. O'Neill, care of Lake Shore Club of Chicago, 850 Lake Shore Drive, Chicago, Ill.
 Mrs. Robert E. Oath, 128 South Church Street, Berryville, Va.
 Mrs. Bertha Rachel Palmer, 814 Collogo Avenue, Wheaton, Ill.
 Dr. and Mrs. Donald W. Palmer, 2737 Hurt Avenue, Evanston, Ill.
 Mrs. Joe K. Parrish, El Paso, Tex. (postmarked)
 Miss Hazel Lucille Phillips, Argenta, Ill.
 Mrs. Mabel Poders, 4646 North Kenmore Avenue, Chicago, Ill.
 Mr. and Mrs. R. V. Prondagast, 7039 Drexel Avenue, Chicago, Ill.
 Mrs. J. H. Reininga, 700 Hastings Street, Park Ridge, Ill.
 Mrs. C. Reynolds, 3233 North Main, Rockford, Ill.
 Mrs. John F. Riordan, 121 South Humphrey Avenue, Oak Park, Ill.
 Samuel Robbins, 176 West 81st Street, New York, N. Y.
 Mrs. Dell S. Roberts, 1441 North Miro Street, New Orleans, La.
 E. Harland Rose, 1012 Main Street, Wheeling, W. Va.
 Miss Mary Rutledge, 2167 33d Street, Astoria, N. Y.
 Ben F. Schafer, 309 Columbia Building, Louisville, Ky.
 Mr. and Mrs. William H. School, Sr., 5801 Mangrove Street North, St. Petersburg, Fla.
 E. J. Schrieber, Sr., Route 6, Box 248, North Main Road, Rockford, Ill.
 Louis H. Schroeder, 412 Sixth Avenue, La Grange, Ill.
 Mrs. Josephine W. Schuman, Box 202, Latrobe, Pa.
 Miss Clara H. Searle, 4131 Dry Creek Road, Napa, Calif.
 Mrs. Helen L. Smith, Rural Route 18, Box 458, Indianapolis, Ind.
 Sherry Smith, Ramapo Street, Monroe, N. Y.
 Mrs. Mary Staples, 6232 North Cicero Avenue, Chicago, Ill.
 Miss Margaret Steele, 1442 East 50th Street, Chicago, Ill.
 Harvey B. Stone, 203 Westway, Baltimore, Md.
 Mrs. R. Straub, 130 Independence South, Freeport, N. Y.
 Mrs. Camilla E. Tillman, 552 Duane Street, Glen Ellyn, Ill.
 Fred C. Tracy, Post Office Box 855, Oshkosh, Wis.
 Mr. and Mrs. Jerome F. Tussock, Box 130, La Mesa, Calif.
 Joe Valloro, 3813 Wilburne Street, Seaford, N. Y.
 Mr. and Mrs. Walter L. Van Brooklin, 741 South 22d Street, Milwaukee, Wis.
 H. T. Van Natta, Watseka, Ill.
 Mrs. Rita Van Wew, 843 Wilcox Avenue, Bronx 65, N. Y.
 Weston Vernon, 1435 Eldorado Drive, Billings, Mont.
 Mrs. Edwin P. Vogel, R. F. D. No. 1, McKean, Pa.
 Mr. W. G. Weaver, 240 Bushnell, San Antonio, Tex.
 Miss Marian L. White, Box 954, Cathedral City, Calif.
 Mrs. Ira E. Westbrook, 207 Lake Street, Evanston, Ill.
 Ira E. Westbrook, Peabody, Westbrook, Watson & Stephenson, 10 South La Salle Street, Chicago, Ill.
 Mrs. Ruth A. Wilber, Orwina, Ill.
 Julian E. Williams, 1709 Edgewood Road, Towson, Md.
 J. E. Willis, Big Sandy, Mont.

Mrs. R. Wilson, Washington, D. C. Mr. and Mrs. R. M. Woodruff, Rural
(postmarked). Route 19, Box 205, Indianapolis, Ind.
Mr. and Mrs. Charles Witt, Wisconsin Edward C. Wren, Route No. 2, Cascade,
Dells, Wis. Mont.
Mrs. Dorothy Wood, Sarasota, Fla. Mrs. G. B. Wright, 120 South Sixth,
(No address; telegram.) Livingston, Mont.

EXHIBIT 4

PETITIONS TO THE COMMITTEE ON RULES AND RESOLUTIONS UNITED STATES
SENATE, WASHINGTON, D. C.

We, the undersigned, urgently request that you oppose all proposed changes in Senate rule XXII, relating to the limitation of debate. It is apparent that the leftwingers and Communist sympathizers are sponsoring this iniquitous bill, which would prevent the conservatives from freely debating all legislation that is inimical to the preservation of individual rights guaranteed under the Constitution.

The entire country will be watching your action in this matter,

M. E. SNAPE,
6941 Northwest 2d Court, Miami, Fla.
(And 783 additional signatures.)

(Additional petitions, identical in text with the above, were received from the following persons:)

WALTER SANCHEZ,
500 Northeast 26th Terra, Miami, Fla.
(And 783 additional signatures.)

STANLEY KING,
600 Northeast 98th Street, Miami, Fla.
(And 10 additional signatures.)

EVA MAE DOWDY,
833 Southwest 14th Avenue, Miami, Fla.
(And 22 additional signatures.)

SPECIAL SUBCOMMITTEE OF THE SENATE COMMITTEE ON RULES AND
ADMINISTRATION,
Senate Office Building, Washington, D. C.

GENTLEMEN: Knowing that there are several proposals now pending for consideration before you with the purpose of subsequent consideration of our legislative arm of our Government of efforts to limit debate therein; therefore, we, the undersigned, realizing the vital importance of our freedom of speech as virtually the key and safeguard of our other freedoms, do direct you, as our "representatives," citizens of our God-given American Republic (not a democracy), that you forcefully and definitely oppose all such said proposals, or their like, now, and at any time. * * *

Hereto witness our signatures:

Respectfully and most sincerely yours,

NORMA L. NELSON,
112 Smith Avenue, Rockford, Ill.
(And 13 additional signatures.)

(A petition, identical in text with the above, was received from the following persons:)

AMELIA HASKELL,
516 North Church Street, Rockford, Ill.
(And 20 additional signatures.)

"Whereas there are pending in the United States Senate certain resolutions for proposed amendments to rule XXII of the United States Senate, i. e., Senate Resolutions 17, 19, 21, 28, 29, 30, and 32, of the 85th Congress, 1st session, each and all of which resolutions are intended and designed to change Senate rule XXII so as to limit free debate in the Senate, 'that one forum of human liberty where no man can gag another and where no master can control the human mind,' and whereas we deem the purpose of the aforesaid Senate resolutions repugnant, obnoxious, and contrary to traditional and well-founded principles

of freedom of speech and unlimited debate in the United States Senate, therefore the undersigned petitioners request that Senators use their influence to defeat, and they themselves vote against, passage of aforesaid Senate resolution to change Senate rule XXII."

WILLIAM WARREN,
7 North Seventh Street, St. Louis, Mo.
(And 30 additional signatures).

(Additional petitions, identical in text with the above, were received from the following persons:)

LEONARD SCOTT,
5531 Pershing Avenue, St. Louis, Mo.
(And seven additional signatures).

MAYME J. COOKSEY,
220 North Kingshighway, St. Louis, Mo.
(And eight additional signatures).

OTTO J. WILHELM,
220 University Club Building, St. Louis, Mo.
(And 12 additional signatures).

GRACE FORTUNE,
5527 Pershing Avenue, St. Louis, Mo.
(And 15 additional signatures).

WM. R. SCHNEIDER,
Ferguson, Mo.
(And 14 additional signatures)

FREDERICK P. NIKMEYER,
501 Clara, St. Louis, Mo.
(And 51 additional signatures).

P. L. ZIMMERMAN,
21 Lee Avenue, Clayton, Mo.
(And six additional signatures).

x

85TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 1509 }

**PROPOSED AMENDMENTS TO RULE XXII OF
THE STANDING RULES OF THE SENATE
(RELATING TO CLOTURE)**

**REPORT
OF THE
COMMITTEE ON RULES AND
ADMINISTRATION
UNITED STATES SENATE
EIGHTY-FIFTH CONGRESS
SECOND SESSION**

TO ACCOMPANY

S. Res. 17

**AMENDING SECTION 2 AND REPEALING SECTION 3 OF
RULE XXII OF THE STANDING RULES OF THE SENATE
(RELATING TO THE PROCEDURE TO LIMIT DEBATE IN
THE SENATE)**

TOGETHER WITH INDIVIDUAL VIEWS

APRIL 30, 1958.—Ordered to be printed

**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1958**

20008

BEST AVAILABLE COPY

COMMITTEE ON RULES AND ADMINISTRATION

THOMAS O. HENNINGS, Jr., Missouri, *Chairman*

CARL HAYDEN, Arizona

CARL T. CURTIS, Nebraska

THEODORE FRANCIS GREEN, Rhode Island

JOHN SHERMAN COOPER, Kentucky

MIKE MANSFIELD, Montana

JACOB K. JAVITS, New York

HERMAN E. TALMADGE, Georgia

CLIFFORD P. CASE, New Jersey

GORDON F. HARRISON, *Chief Clerk and Counsel*

FRANKLIN B. DRYDEN, *Professional Staff Member*

WALTER L. MOTE, *Professional Staff Member*

SPECIAL SUBCOMMITTEE ON AMENDMENTS TO RULE XXII

HERMAN E. TALMADGE, Georgia

JACOB K. JAVITS, New York

LANGDON WEST, *Special Counsel*

JOHN P. OODER, *Editorial Assistant*

CONTENTS

Majority views.....	Page 8
Individual concurring views of—	
Mr. Cooper.....	7
Mr. Javits.....	9
Individual dissenting views of—	
Mr. Talmadge.....	31
Mr. Curtis.....	43

PROPOSED AMENDMENTS TO RULE XXII OF THE STANDING RULES OF THE SENATE (RELATING TO CLOTURE)

APRIL 30, 1958.—Ordered to be printed

Mr. HENNINGS, from the Committee on Rules and Administration,
submitted the following

REPORT

together with

INDIVIDUAL VIEWS

[To accompany S. Res. 17]

The Committee on Rules and Administration, to whom was referred Senate Resolutions 17, 19, 21, 28, 29, 30, 32, and 171, having considered these resolutions report favorably Senate Resolution 17 without amendment and recommend that this resolution be agreed to. Senate Resolution 17 would amend section 2 and would repeal section 3 of rule XXII of the Standing Rules of the Senate, relating to the procedure to limit debate in the Senate.

S. Res. 17, if adopted by the Senate, would effect the following changes in rule XXII of the Standing Rules of the Senate.

[Omit the part struck through and insert the part printed in italics]

RULE XXII

PRECEDENCE OF MOTIONS

1. When a question is pending, no motion shall be received but—

To adjourn.

To adjourn to a day certain, or that when the Senate adjourn it shall be to a day certain.

To take a recess.

To proceed to the consideration of executive business.

To lay on the table.

To postpone indefinitely.

To postpone to a day certain.

To commit.

To amend.

Which several motions shall have precedence as they stand arranged; and the motions relating to adjournment, to take a recess, to proceed to the consideration of executive business, to lay on the table, shall be decided without debate.

2. Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, except subsection 3 of rule XXII, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by two-thirds of the Senators duly chosen and sworn, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

2. (a) If at any time, notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, a motion, signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate pursuant to this subsection, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by a two-thirds vote of the Senators present and voting, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

(b) If at any time, notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, a motion, signed by sixteen Senators, to bring to a close the debate upon any measure, motion, or other matter pending before the Senate, or the unfinished business, is presented to the Senate pursuant to this subsection, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the fifteenth calendar day thereafter (exclusive of Sundays and legal holidays), he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without further debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by a majority vote of the Senators duly chosen and sworn, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business,

the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

2. The provisions of the last paragraph of rule VIII (prohibiting debate on motions made before 2 o'clock) and of subsection 2 of this rule shall not apply to any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate.

The Senate Committee on Rules and Administration on June 12, 1957, appointed a special subcommittee consisting of Senator Herman E. Talmadge, of Georgia, and Senator Jacob K. Javits, of New York, as cochairmen to hold public hearings on and consider proposed amendments to rule XXII of the Standing Rules of the Senate. This subcommittee held extensive hearings on June 17, 24, 25, and 28 and July 2, 9, and 16, 1957.

Other hearings on rule XXII have been held before—in 1947, 1949, 1951—and the Committee on Rules and Administration has recommended amendment in its reports of April 3, 1947, February 17, 1949, March 6, 1952, and May 12, 1953. The issue was also involved in the debate which developed on the unsuccessful motion to adopt rules at the beginning of the 83d and 85th Congresses.

Senator Talmadge and Senator Javits having filed their individual views with the full committee, the committee met on March 26, 1958, and a majority voted to report favorably Senate Resolution 17.

In the opinion of the majority of the committee the United States Senate as a parliamentary body of a constitutional democracy should, in order to fulfill more fully its historic function, provide under its rules of procedure for the two basic functions of all parliamentary bodies: (1) The opportunity to debate fully and adequately all questions which come before it, and (2) the opportunity of a majority of the body to act on issues after proper debate—to act in the only way in which a parliamentary body can act—by voting.

Viewed in somewhat different terms the problem of control of parliamentary debate can be stated as one of protecting minorities—sectional, economic, or of whatever description—against hasty and, at times, unsound action by the majority (often only a temporary majority) and of permitting the majority after reasonable procedural delays to prevail.

The majority of the committee, after carefully considering the conflicts of interest and the complex questions involved in devising a fair and effective rule, have concluded that Standing Rule XXII in its present form is inadequate and that Senate Resolution 17 would provide a great improvement over the present rule.

Rule XXII as it now reads provides that 2 calendar days after presentation to the Senate of a written motion for cloture signed by 16 Senators, cloture may be imposed by affirmative vote of two-thirds of the Senators "duly chosen and sworn" (i. e., usually 64). If such cloture motion be adopted each Senator is thereafter limited to a total of 1 hour's time in debate on the pending matter. The rule further provides that even this difficult cloture may not be imposed on any motion or resolution to change any of the standing rules of the Senate including rule XXII itself. (This further restriction is, in our opinion,

beyond the power of the Senate to adopt, as the advisory opinion of Vice President Nixon, January 4, 1957, concluded.)

Rule XXII prevents the imposition of cloture unless 64 Senators appear and vote in favor of a cloture motion.

It is important to bear in mind that under the present rule a Senator does not have to vote against a cloture motion to help prevent its adoption. If fewer than 64 Senators vote in favor of cloture it is not imposed. All that is needed under the present rules to prevent a limitation on debate is for 33 Senators either to vote against the cloture motion or to fail to be present to vote for it. Absence is made equivalent to a vote against cloture.

The realistic effect of the present rule is that a small minority of Senators (far fewer than 33 as a practical matter), if sufficiently determined, can by use of a filibuster absolutely prevent the Senate from taking action even though a great majority of Senators desires to come to a vote on any particular issue. Voting is the final method of resolution of national issues contemplated in the Constitution. Protracted speaking which is not intended to illuminate that decision, but to prevent its occurrence, makes a mockery of freedom of speech by confusing it with freedom to obstruct.

Insofar as rule XXII permits a minority of the Senate to frustrate the majority in reaching a determination of an issue, we think it is contrary to the spirit of the Constitution and to the consensus of the Founding Fathers of our Government and to the early precedents of Senate history.

In the early Senate, the simple majority cloture was used, and the "previous question" as a parliamentary device was available under Senate rules and in Jefferson's Manual to bring an issue to a vote. Even after reference to the "previous question" was dropped from the standing rules (in 1806), the presiding officer's power to rule on questions of relevancy and order could have prevented abuse brought about through unrestrained irrelevancies. The conjunction of the lack of cloture and the lack of enforcement of a rule of relevancy (after 1872) made possible the modern veto-type filibuster.

Subsection 3 of rule XXII deserves separate attention for it is a built-in filibuster device, which, if held valid, makes the whole rule so unjust as to require it to fall of its own weight of unfairness. It is difficult to obtain the affirmative vote of 64 Senators to limit a filibuster on any subject. But when a motion to change rule XXII itself (or for that matter any rule of the Senate) is involved, subsection 3 requires, in effect, unanimous consent. It raises minority control to such a degree that Vice President Nixon found that it is in principle unconstitutional.

Pursuant to the Constitution each House determines its own rules of procedure, and in this context action by each House means a majority of each House. A practical delegation of that power to 1 Senator or to 33 Senators is beyond the power of this body. Its responsibilities are derived from the Constitution and, short of amending that document, there is no way of qualifying this power.

Senate Resolution 17 provides that debate may be limited by a vote of two-thirds of the Senators present and voting 2 days after 16 Senators have filed a petition for this purpose. It further provides that 15 days, exclusive of Sundays and holidays, after the presentation to the Senate of a petition signed by 16 Senators, the Senate by a

majority vote of those "duly chosen and sworn" (49 of the 96 Senators) may also impose cloture. Moreover, it eliminates the exemption to any form of cloture of a motion to change the Senate's standing rules (subsec. 3). As in the present rule, even after cloture is voted each Senator may speak for 1 additional hour before the vote.

In the opinion of the majority of the committee neither freedom of speech nor the right of full debate in the Senate is at issue in this recommendation that Senate Resolution 17 be adopted by the Senate. In advocating a change in rule XXII to permit effective cloture while allowing for full and adequate debate, we seek no abridgment of the liberty of speech, but a just and necessary restraint upon an abuse which hinders or frustrates the performance by the Senate of its constitutional duty and perverts the reasonable function and objective of the spoken word.

The deep responsibility which rests on the Senate in this matter is highlighted by the emergency character of issues facing our country, issues of peace or oblivion, issues in the resolving of which the United States Senate will play a leading role. As our country and our world move forward at this present rapid pace, we cannot continue a procedural roadblock which can paralyze the functioning of the Senate. Important at any time, that fact is of a crucial nature now.

THOMAS C. HENNINGS, Jr.
THEODORE FRANCIS GREEN.
JOHN SHERMAN COOPER.
JACOB K. JAVITS.
CLIFFORD P. CASE.

INDIVIDUAL VIEWS OF MR. COOPER

I voted with the majority of the committee to report Senate Resolution 17 to the Senate favorably because I think the issues involved in the problem of Senate cloture should be thoroughly discussed and settled during this session and prior to the beginning of the 1st session of the 86th Congress next January.

Rule XXII as presently worded acts as an effective obstacle, in my opinion, to action by the Senate in the form of a vote on any question on which a small but determined minority desires that the Senate be frustrated. I believe in majority rule, save as our Federal Constitution has placed certain fundamental restraints on such action in behalf of minorities.

I believe that the Senate—that a majority of the Senate except in the cases enumerated in the Constitution—should be permitted ultimately in the course of a deliberation and debate on a great national question to act by voting. I am not sure that Senate Resolution 17 is the best rule that can be devised but on the other hand I am certain that the present rule at times stultifies the Senate as an effective parliamentary body. I would not be opposed to a longer waiting period than that proposed in Senate Resolution 17 before cloture would become effective, to remove any question about adequate debate.

Two things in this issue are important in my opinion: The first is that there should be an opportunity to debate fully all controversial questions. The second is that a majority of the Senate, if it so desires, should be permitted, under the rules that govern this great deliberative body, to reach ultimately a vote on any question before it.

In joining the majority in reporting Senate Resolution 17 favorably, I reserve the right to sponsor or support amendments in the Senate which in my opinion will more effectively achieve the goals of parliamentary procedure outlined above.

JOHN SHERMAN COOPER.

INDIVIDUAL VIEWS OF MR. JAVITS

SUMMARY STATEMENT

After careful study of the hearing testimony and of the historic conceptions of the function of the Senate, I am convinced that rule XXII needs amendment to end its veto power on behalf of a small minority; while at the same time assuring the opportunity for full debate and discussion of any subject in the Senate, which has been called the greatest deliberative body on earth.

I do not believe that the present rule XXII serves the purpose of deliberation within the Senate or of education of the public generally. No one questions those two objectives. What I do question is a delegation of the power and responsibility of the majority to a determined minority, which has been and can be again and again an arbitrary block to action, contrary to the will of the majority of this body and of the people to whom they are responsible. Indeed, it seems to me prophetic that this report is filed at an hour of basic crisis in the defense of our country when the weapons which challenge us are precisely so mortally dangerous because of the speed with which they may be effectively used to destroy us. In such a time—and there is nothing temporary about this new frame of reference—there is a justifiable demand for making our organs of decision conform to the challenge. How appropriate, then, to consider now a rule of debate which can and has paralyzed decision in the Senate and which can be used by a determined minority to paralyze it on any subject—not alone civil rights. Rule XXII as now written was archaic long before the first Russian earth satellite was launched and is even more so now.

Careful research on the development of the United States Government from its initial period under the Articles of Confederation, through the Constitutional Convention of 1787, when studied in the light of the contemporaneous writings of the Founding Fathers, convinces me that the power which now stems from rule XXII was not even contemplated at the time. On the contrary, from the expressed views of Madison, Hamilton, and others, a method of parliamentary procedure promised on rule XXII would have been violently opposed had it been suggested.

For the premise of rule XXII violates fundamental parliamentary law. It is at odds with early Senate procedures, British Parliamentary practice, and, almost without exception, is contrary to all our State legislative rules of procedure.

In the early Senate, simple majority cloture was used and the "previous question" as a parliamentary device was available under Senate rules and in Jefferson's Senate Manual to close debates. Even after reference to the "previous question" was dropped from the standing rules (in 1806), the presiding officer's power to rule on questions of relevancy and order could have prevented abuse through unrestrained irrelevancies. The conjunction of the lack of cloture and

the lack of enforcement of a rule of relevancy (after 1872) made possible the modern veto-type filibuster.

Its fullest development and its most flagrant abuses have occurred following the Civil War in opposition to civil rights legislation—mostly in the last 35 years.

While rule XXII did not prevent enactment of the Civil Rights Act of the last session, I believe it did profoundly affect its final formulation, as I shall set forth in more detail subsequently.

Neither national interest, history, nor commonsense support the retention of the present provisions of the Senate rule, and I recommend it be amended for the reasons set forth in this report.

PRESENT RULE—CONTEXT OF PROBLEM

Rule XXII as it now reads provides that 2 calendar days after presentation to the Senate of a written motion for cloture signed by 16 Senators, cloture may be imposed by affirmative vote of two-thirds of the Senators "duly chosen and sworn" (i. e., 64). If such cloture motion be adopted each Senator is thereafter limited to a total of 1 hour's time in debate on the pending matter. The rule further provides that even this difficult cloture may *not* be imposed on any motion or resolution to change any of the standing rules of the Senate including rule XXII itself. (This further restriction is probably beyond the power of the Senate to adopt, as the advisory opinion of Vice President Nixon, January 4, 1957, concluded.)

Rule XXII prevents the imposition of cloture unless 64 Senators appear and vote in favor of a cloture motion.

It is important to bear in mind that under the present rule a Senator does not have to vote against a cloture motion to help prevent its adoption. If fewer than 64 Senators vote in favor of cloture it is not imposed. All that is needed under the present rules to prevent a limitation on debate is for 33 Senators either to vote against the cloture motion or to fail to be present to vote for it. Absence is made equivalent to a vote against cloture.¹

The realistic effect of the present rule is that a small minority of Senators (far fewer than 33 as a practical matter), if sufficiently determined, can by use of a filibuster absolutely prevent the Senate from taking action (in the only way it can—by voting) even though a great majority of Senators desires to come to a vote. Voting is the final method of resolution of national issues contemplated in the Constitution. Protracted speaking which is not intended to illuminate that decision, but to prevent its occurrence, makes a mockery of freedom of speech by confusing it with freedom to obstruct. It does not require great imagination to grasp the significance of this potential power in the hands of Members bent on influencing enactment or the course of particular proposals, without the necessity for persuasion.

ISSUE

The basic issue underlying the problem of cloture is whether we shall permit the Senate, resting as it does on the premise of majority

¹ The average voting attendance on motions to impose cloture in the Senate between the initiation of the rule in 1917 and the 1949 amendment was 84. Two-thirds of those voting would be 56. The 1949 requirement of 64 affirmative votes, therefore, greatly increased the previous difficulty of imposing cloture under the 1917 rule. On the basis of this experience the change meant three-fourths of the Senators "present and voting" would have to favor cloture in order to impose it. The 1949 amendment, therefore, in this respect, was a retrogressional step.

rule, to function at all; to fulfill its legislative purpose; or whether we shall permit the Congress to be stultified by the undemocratic and, in essence, unparliamentary device of filibuster in the Senate—even though cloaked in the senatorial toga of rule XXII.

In analyzing their impact on representative government, I would hazard at least three classifications of filibusters:

1. Those conducted by a very few Senators, sometimes by only one Senator. The speeches may or may not be relevant, but, relevant or not, although they are not utilized to convince, neither can they usually prevent action.

2. Those conducted by a substantial number of Senators and, again, usually not intended to prevent action, but only to delay it, while the people of the country become better acquainted with the issues (either through senatorial exposition or upon independent reflection), and obtain an opportunity to make their views known to their Senators.

3. Those conducted by a substantial minority of Senators organized and intended to prevent Senate action—to stop it absolutely or materially to alter its character, not through Senate persuasion or public awareness, but simply through the filibuster—or even the threat of it, expressed or implied. (These are the stultifying filibusters with which this report is primarily concerned.)

My colleague, Senator Douglas of Illinois, has said that the term "filibuster" should properly be applied only to this stultifying variety. While I think this is accurate, the term has been used to cover all types of speeches where the length of the speech is not reasonably designed for persuasion.

The first two types in any given situation may be a waste of the Senate's time or a great benefit, depending on one's own point of view, in the circumstances; but, at least, neither of them prevents the Senate from seasonably acting, and if immediate action is not vital, these, at worst, are tolerable and at best are an enlargement of the opportunity for full discussion, so characteristic of the Senate.

THE POWER OF THE FILIBUSTER AS A VETO, WITH A CASE HISTORY OF THE CIVIL RIGHTS BILL OF 1957

The ability to carry on a filibuster can affect the kind of legislation passed by the Senate even though no actual filibuster is undertaken. The incidence of a filibuster or the certain knowledge that a filibuster would be organized has made the majority come to terms before. The mere threat that a filibuster of great length would be undertaken against some proposal or unless amendment to a bill was accepted has in effect resulted in the majority of the Senate acquiescing in changes in legislation which otherwise they would probably not have considered wise or desirable.

Careful study of the legislative background and history of the civil rights bill of 1957 and the changes that occurred during the long Senate debate bears out this conclusion and illustrates the pervasive and subtle effect of rule XXII. The bipartisan effort which bypassed the usual procedure of referral of the House bill to committee clearly showed that the majority of Senators were determined to act upon civil rights legislation. It was generally conceded that a reasonable time would be allocated to the discussion of whether the Senate should adopt the procedure of bypassing the committee. No actual

filibuster took place at this point—although, clearly, the possibility had to be reckoned with. The vote for direct Senate consideration of the House bill as opposed to committee referral was 45 to 39.

Following this vote, it became apparent that a bloc of Senators had selected part III as the most objectionable feature of the bill from their viewpoint; and that they were prepared to use every parliamentary device to prevent the enactment of a law which would contain the authorization for the Attorney General on his own motion to enforce through civil action (as an alternative to criminal prosecutions in existing law) the provisions of the 14th amendment to the Constitution. I believe that a number of Senators, among whom were some who favored the retention of part III, felt that insistence on part III would inevitably force the Senators from the South into a filibuster, with the ensuing possibility that no bill at all might be passed. That may well have been the case, although personally I believed then, and I believe now, that the risk should have been taken. In my mind it had become clear that the Federal Government had the responsibility of assuring reasonable civil enforcement powers under the 14th amendment; especially since a number of States in the South had passed laws which had the effect of making privately initiated litigation very difficult—the so-called antibarratry and similar statutes. Thus, I felt that justice and conscience required the issue to be met on principle; and not on the sole ground of procedural difficulties which such a fight would entail. The vote which struck part III was 52 to 38.

The reasons which motivated the Senators to vote against part III undoubtedly were many and varied. Certainly, no one can say for sure that without the threat of organized filibuster, part III would have been retained; but, it is my belief that a critical number of Senators did become convinced of the impossibility—or at least the improbability—of passing a bill with part III, and that their views were necessarily affected by this consideration. It must remain conjectural why part III was lost to the legislation. I have no doubt that if part III had been retained in the bill the Senate would have faced the necessity of a long filibuster which could be blocked only if a large majority were sufficiently determined to sit out the long dreary months that would have been involved. In that interim, no other business could have been transacted and Congress would have been at a standstill. In these times, with important pending legislation, this was a risk to which, naturally, Members of the Senate should give thoughtful consideration. The determined proponents of part III were fully aware of consequences of insisting upon it. Schedules were worked out for around-the-clock coverage of the Senate floor, Members had beds installed in their offices, the staff details were worked out for a 24-hour operation. Senator Russell of Georgia, the leader of the southern bloc of Senators, was interviewed on a nationwide television program, *Face the Nation*, on July 21, 1957. Pertinent excerpts of the interview transcript inserted in the Congressional Record of July 22, 1957, indicate clearly the position of the minority:

Mr. SHADEL. But, Senator, is there any feeling in the Senate that this bill is going to go through, as is, without modifications?

Senator RUSSELL. Not on my part because I will certainly die fighting it in my tracks before this vicious bill could go through, and I would feel the same way if it were aimed at any section of the country. * * *

* * * * *

Mr. LAWRENCE. Well, would it be the intention of the South, under the circumstances that I can foresee and that you can foresee at the moment, to talk this bill to death?

Senator RUSSELL. I can't say that, Mr. Lawrence, without seeing the bill and if it has these very vicious provisions in it, well, you may be sure that we will use every means at our command to fight it to the very death because it is a very vicious piece of legislation in its present form.

Decision by ordeal was imminent.

No one who participated in the Senate's deliberations could escape the sense of drama, or the mounting tension and concern over the threat inherent in a filibuster. It was in this atmosphere that crucial decisions were made resulting in a number of changes in the legislation, including the elimination of part III.

There were other amendments to the civil-rights bill, although not as vital as part III, which demonstrated the power of the filibuster possibilities inherent in rule XXII to condition and to modify legislation. Even the proponents of a strong civil-rights bill joined in amending the bill to grant additional power over commission staff selection to the Senate or remove certain features which were felt most objectionable to the southern Members. These amendments, although they have not yet proved crucial, reflected again the power of the filibuster threat. They included striking out of the specific power of the President to enforce Federal court decrees. As demonstrated by developments in Little Rock, this specific grant of power was unnecessary. The President retained the power as a necessary incident of his Executive responsibility. The appointment of the Executive Director of the Commission was made subject to Senate confirmation, with the practical effect of giving additional authority to the opponents of civil rights who are powerful members of the committee which will initially pass upon his selection. These amendments were approved, among other reasons, to help insure no filibuster.

Once part III had been eliminated and the other concessions given, and even after the Senate had interposed the jury trial requirement in the voting rights provision, it was not at all clear that there would not be a filibuster against the remaining bill. But, ironic as it may seem, at this point rule XXII well may have had an unexpected effect upon the chances for passage of the bill. Rule XXII is the final inner citadel of the opponents of civil-rights legislation. It is the last fortress in the legislative arm for a determined minority to prevent altogether or to water down substantially legislation that they violently oppose. As a consequence, there came a point at which the minority had to face the realization that reckless opposition to a very mild civil-rights bill would build up tremendous forces for a direct assault on rule XXII itself. Having drawn a number of teeth from the civil-rights bill the decision was seemingly made to keep rule XXII as impregnable as possible by permitting the bill to come to a vote.

On the one hand, without question the southern Senators on the civil-rights issue had accomplished a great deal, from their point of view. Senator Russell of Georgia summed up this matter for the opposition in retrospect on August 30, 1957, when he said in the Senate:

When it is considered that there were only 18 out of 96 Senators, all of us suspect because we were from the South, who were willing to wage an all-out fight on this bill, I think that I can, in all modesty, say for myself and my associates

that the legislative history of the Senate does not reveal as great a victory from so small a group as the one we attained.

At the same time, Senator Russell admitted that the use of the filibuster was often discussed by the southern bloc, but that it was generally decided to avoid it. This decision was not universally accepted. Senator Thurmond established a record of speaking for over 24 hours—a feat which turned out to be completely unrelated to effective opposition to the final version of the bill. It did, however, serve to emphasize, if it were necessary, that rule XXII contains a coercive power that could not be underestimated. The other southern Members who did not join in a filibuster had apparently weighed its use against graver consequences. My cochairman, Senator Talmadge, following Senator Thurmond's recordbreaking stint, stated the dilemma thus (on August 30, 1957):

Because of the present complexion of the Rules Committee, it is well known that any filibuster attempt would result in the reporting of one or more of these pending resolutions and the imposition of a much stronger cloture rule, which would further limit the ability of individual Senators to protect their constituents.

On August 7 in the Senate, Senator McNamara, of Michigan, stated the case somewhat differently:

The defenders of segregation have won a great defensive victory which, in the opinion of some of us, will cost our country dearly, internally and in our standing among the nations and peoples of the world.

The defenders of segregation fought with skill and determination. They were united. They were able to win the support of many who were and, I believe, still are, opposed to the continuance of segregation and first- and second-class citizenship in this country. Why?

Without attempting to detract from the skill, stamina, and success of those who are opposed to civil-rights legislation, it must be said that their victory was won, not on July 24, when part III was stricken from the House bill by a vote of 52 to 38, nor on August 1 when part IV was largely nullified for Negroes in large areas of the South by the 51-to-42 vote for the so-called jury-trial amendment, but on January 4, 1957. That was when the Senate voted, 55 to 38, to put King Filibuster back on his invisible but very real throne overlooking and dominating this Chamber.

I believe that the Senate will not pass needed civil-rights legislation until rule XXII has been modified so that it no longer holds its effective restraint on this body in the area of enforcing constitutional rights.

In closing on this point, I should like to add that Little Rock has demonstrated that the decision taken by the Senate to eliminate part III was unwise and that the risk of a stubborn filibuster should have been faced in the last session.

Close observers of the legislative process in Congress are aware of this force—of the filibuster—in other legislative compromises which have been adopted, and could cite other examples of the effect of the filibuster on legislation. Vice President Charles G. Dawes, a keen student of Senate proceedings, described the effect of the filibuster in the following words:

The right of filibuster does not affect simply legislation defeated but, in much greater degree, legislation passed, continually weaving into our laws, which should be framed in the public interest alone, modifications dictated by personal and sectional interest as distinguished from the public interest.

It is no answer to say, as some do say, that such power prevents or softens bad legislation. Of course, it may do that; because legislative proposals subject to a successful filibuster do not get enacted. If any

specific action is bad, inaction may be preferred. If all change were bad, then whatever inhibited it would be wise. But the millennium is not here and events do not wait, even if governments do. This built-in stalemate as a permanent method of procedure is opposed to our American spirit and genius.

If the men who conceived our Constitution had thought we needed the concurrence of the majority of two Houses, the assent of the President, and in addition the forbearance of 33 Senators to make law, I assume they would have said so. If this additional check on governmental action is necessary, let us amend the Constitution. The standing rules of the Senate were not drafted in Philadelphia in 1787. The American people neither concurred in them nor agreed to be bound by them—nor did the States. In each Congress, as adopted or acquiesced in, and, to the extent they are constitutional, they bind our Senate procedure so long as they remain unchanged, but they are not the supreme law. They are not the bulwark of free speech and States rights; nor are they immutable.

IN ANSWER TO PRINCIPAL ARGUMENTS FAVORING RULE XXII

In my study I have given close attention to the arguments put forward by many of those opposed to any change in rule XXII and who appeared before our subcommittee. Some of these are superficial and based upon an erroneous conception of our Government. However, there are impressive lines of reasoning employed in defense of the present wording of rule XXII, and much of this, too, was brought out during the hearings. One of the most distinguished arguments in opposition to a change in the rule in my opinion was made by my colleague, Senator Stennis of Mississippi. Excerpts from his testimony follow:

Now, the phrase "State rights" is often used. I am thinking of this in terms of States powers. We are down to the last nub of representation of States as States * * *

It is only in the Senate that the States as such have representation. Their rights and powers are deposited in the Senate Chamber. It is their only forum in Government. It is the only place where their rights and powers, which were not delegated but were reserved under the 9th and 10th amendments, find their protectors.

If this be true, and it is true, then it must follow that the Senators elected from their States are the trustees of their States rights and powers.

Members of the Senate had nothing to do with creating these rights and powers. That was accomplished when the Bill of Rights was adopted.

They have a responsibility, where legislation involves the creation of new Federal power, to see that their States rights are protected * * *

They have a duty to go forward in protecting the rights of States which have entrusted them with the power of a senatorial vote.

On the specific issues which come before the Senate, I feel that the question of support or opposition to any measure should depend not only on the individual Member's opinions on the effect of this legislation at the national level, but should also reflect the searching of his conscience as to whether the power of the State he represents would be effectively diminished in derogation of the constitutional balance and whether, in effect, he is violating the trust placed in him by the people of the State he represents by assenting to a loss of some incident of sovereignty of the State * * *

I think that the Government must be kept close to and responsible to the people, and that the effectiveness of local and State government should not be further diminished by ill-considered and unwise legislation * * *

This rule, and the underlying principle of full and free discussion of major national issues, more than any other single thing determines the power of the States in their representation in the Senate. As much as any other single thing, the

principle of free discussion without the threat of a gag rule determines the nature of the Senate and contributes to its stability.

Now there is your Senate as an institution.

If this rule were eliminated and cloture were made possible by a mere majority vote of the Senate, the deliberative function of the Senate would be destroyed. It would be a mere annex of the House of Representatives, and would be merely another legislative body * * *

The heart of this argument against amendment is contained in the rhetorical questions (1) whether "the power of the State he [a Senator] represents would be effectively diminished in derogation of the constitutional balance and whether, in effect, he is violating a trust by assenting to a loss of some incident of sovereignty of the State"; (2) whether "the deliberative function of the Senate would be destroyed."

On the first question, one may, of course, argue that the existence of rule XXII by which any substantial group of Senators can conduct a filibuster so as to act as a veto, constitutes a "power" which may be exercised on behalf of the States represented by the filibustering Senators; but it is the power neither of persuasion nor of public education. It is an arbitrary power unsanctioned by the Constitution and indeed in direct conflict with its spirit.

Far from securing any constitutional balance, rule XXII seriously disturbs it. The Constitution, in article I, section 5, clause 1, states that—

A majority of each [House] shall constitute a quorum to do business.

That is, 49 Senators are sufficient for the transaction of legislative business. A majority of this quorum is required to assent to the passage of a normal bill. Yet cloture may not be invoked unless at least 64 Members are present and vote for cloture. Legislation of the most profound national effect requires the assent of fewer than half of those required to bring a filibuster to a reasonable close so that that very legislation may be acted upon. I fail to see what balance is here maintained by continuance of the present rule. Alexander Hamilton in arguing, in the Federalist Papers, for the adoption of the Constitution he had helped frame, set forth the need for a totally different balance (Federalist Papers No. 22):

To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision), is, in its tendency, to subject the sense of the greater number to that of the lesser * * * This is one of those refinements which, in practice, has an effect the reverse of what is expected from it in theory. The necessity of unanimity in public bodies, or of something approaching toward it, has been founded upon a supposition that it would contribute to security. But its real operation is to embarrass the administration, to destroy the energy of the Government, and to substitute the pleasure, caprice, or artifices of an insignificant, turbulent, or corrupt junto, to the regular deliberations and decisions of a respectable majority * * * The public business must, in some way or other, go forward. If a pertinacious minority can control the opinion of a majority respecting the best mode of conducting it, the majority, in order that something may be done, must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater, and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good, and yet, in such a system, it is even happy when such compromises can take place: for upon some occasions things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often, by the impracticability of obtaining the concurrence of the necessary number of votes, kept in a state of inaction. Its situation must always savor of weakness, sometimes border upon anarchy * * *

When the concurrence of a large number is required by the Constitution to the doing of any national act, we are apt to rest satisfied that all is safe, because nothing

improper will be likely to be done; but we forget how much good may be prevented, and how much ill may be produced, by the power of hindering the doing what may be necessary; and of keeping affairs in the same unfavorable posture in which they may happen to stand at particular periods.

To be sure, there are times when more than a majority is required under the Constitution; but even in these instances only two-thirds of those present is required on any vote. Strangely enough it takes more Senators to shut off a filibuster by one Senator than it takes to expel a Member from the Senate.

There was a great question of the proper balance of State representation in the Congress in 1787. A study of the debates of the Constitutional Convention shows very clearly that the decision to establish 2 Houses, one to be based on a reference to population, and the other to have 2 Senators from each State regardless of size or population, was the compromise between the delegates from big States and the delegates from the small States. This was the only basis on which the small States would agree to join the Federal Union. This was the great compromise that gave the small States an equal measure of legislative power with the more populous States in this body.

As far as the big States are concerned, according to Madison and others devoted to the principle of proportional representation, they had given enough and more than enough when they finally agreed that each State should have two votes in the Senate. No one then dreamed that in the future Senators would want to upset this balance and add an additional check by a small minority of one-third upon the power of a majority of the Senate as so constituted. This, of course, was long prior to the time when John C. Calhoun developed his theory of concurrent majorities under which legislation favored by a majority in the country as a whole or in the Congress would be subject to the veto of a majority of each and every sectional interest in the country.

This kind of balance, which the opponents of civil-rights legislation wish to retain in the Senate, is a modern version of Calhoun's "concurrent majorities." It was such a sectional right of veto and interposition that Calhoun and other States-rights advocates urged during the debates, in and out of Congress, that led up to the Civil War. This type of imbalance, however, finds no support in the Constitution nor in current practice outside of rule XXII.³

On Senator Stennis' second point: that to make cloture easier would bring about "gag rule" and destroy the unique characteristic of the Senate—its role as a deliberative body—I wish first to note that I, too, consider the United States Senate a great deliberative body and with great pride serve as a Member.

I submit, however, that the Senate is a distinguished body, not because of filibusters or the license to engage in them enjoyed under the present rules, but in spite of them and in spite of the present license to engage in them. No one who has examined some of the filibusters in the Senate would seriously describe them as scenes of great deliberation in keeping with the dignity and prestige of the Senate.

Those who have used the filibuster as an instrument of veto have been under no illusion that they were always thereby contributing to a "full and free discussion" of national issues. Some former Senators have been quite candid about the purpose of the filibuster. In 1922

³ The paralyzing effect of the minority veto is clearly evident in the deliberations of the United Nations Security Council.

Senator Underwood of Alabama said, with respect to the filibuster against the Dyer antilynching bill, as follows:

We are not disguising what is being done on this side of the Chamber. It must be apparent, not only to the Senate but to the country, that an effort is being made to prevent the consideration of a certain bill, and I want to be perfectly candid about it. It is known throughout the country generally as a "force" bill. * * *

I do not say that captiously. I think all men here know that under the rules of the Senate when 15 or 20 or 25 men say that you cannot pass a certain bill, it cannot be passed. * * *

I want to say right now to the Senate that if the majority party insists on this procedure they are not going to pass the bill, and they are not going to do any other business. * * *

You know you cannot pass it. Then let us go along and attend to the business of the country. [Emphasis supplied.]

Shortly thereafter he posed the dilemma which the Senate faced even more concisely:

There is but one way for the Senate now to get down to work and transact the business of the Government before the 4th of March, and that is to get a final disposition of this force bill before anything else is done. Pass it if you can; abandon it if we force you to do so. * * *

So long as the Senate has the rules that it has now, you know just as well as I know that I am standing here that you cannot pass it; and, more than that, the country does not want you to pass it.

The reality of the use of the filibuster as a veto has been borne out by the experience of the intervening years.

As my colleague, Senator Kuchel, of California, put it last summer in the hearings before this subcommittee:

How can any reasonable person uphold such tactics as those which occurred some years ago when the Senate ludicrously debated for 2 weeks a motion to amend the Chaplain's prayer?

Permitting a Senator or a group of Senators to talk for hours and days on any conceivable subject or on no subject in order to consume time and prevent the Senate from voting, affords no dignity to the Senate and adds nothing to its deliberative function. Reading recipes for "pot licker," "fried oysters," quoting from Aesops Fables,¹ and otherwise talking in utter irrelevancies does nothing to enhance the Senate's standing as a great deliberative body.

Senators have a right—and freely exercise it—to express their views on any question before the Senate or before the country. Without doubt it would be a violation of the letter and the spirit of the Constitution to deny or even seriously abridge the right of debate. But, it is also a most flagrant violation of the spirit of the Constitution to clothe this body with forms of procedure by which it may be blocked in the exercise of the legislative powers, and thereby suspended of every other function except that of speaking. The Senate has a duty to debate, but it is likewise a constitutional duty of a majority of this body to act, and with some reasonable expedition. We are obligated not only to pass laws, but also to pass them in time to meet the public need and the general welfare of the country.

Some observers have declared that, far from enhancing the Senate's deliberative function, the right to filibuster has all but destroyed it.

¹ During the filibuster against the extension of a skeletonized NRA, Senator Long discussed various recipes at great length. This talk continued for 15½ hours and included the reading of long passages from works of Victor Hugo and a reading and discussion of the United States Constitution, article by article, without any necessary reference to the pending business. (See vol. 79, pt. 8, pp. 9122 et seq.)

On June 20, 1934, Senator Rush D. Holt of West Virginia successfully filibustered against passage of a coal conservation bill by reading Aesops Fables to the Senate. The Senate finally adjourned, sine die, without ever voting on the bill.

Vice President Dawes, for example, said of the veto power of the filibuster:

The Senate is not and cannot be a properly deliberative body, giving due consideration to the passage of all laws, unless it allots its time for work according to the relative importance of its duties, as do all other great parliamentary bodies. It has, however, through the right of unlimited debate surrendered to the whim and personal purposes of individuals and minorities its right to allot its own time. Only the establishment of majority cloture will enable the Senate to make itself a properly deliberative body. This is impossible when it must sit idly by and see time needed for deliberation frittered away in frivolous and irrelevant talk, indulged in by individuals and minorities for ulterior purposes.

Yet, the Senators who argue that rule XXII should be retained in its present form support this retention as necessary to its deliberative character. I certainly agree that the Senate is a forum of great debate, deliberation, and revision; but I submit that it owes nothing to rule XXII for achieving this distinction. It has achieved that eminence despite the rule.

HISTORY OF THE PREVIOUS QUESTION AND CLOTURE

Having considered why the present rule serves neither the constitutional balance of States rights nor the deliberative function of the Senate, it is useful to review the development of cloture and the closely connected motion for the "previous question" in order to evaluate the pending proposals for amendment of rule XXII.

In Mason's *Manual of Legislative Procedure* (1953) the motion is described thus:

The previous question may be used to close debate on any debatable question * * *. The effect of the motion, if adopted, is to require that the question [before the legislative body] be put to vote immediately. It would be more aptly designated "vote immediately" * * *.

While the result of passing a motion for the previous question under general parliamentary law is to bring on the main question for immediate vote, the effect of defeating it is to postpone the main question. The almost universal use of the motion in American parliamentary bodies is to bring about cloture.

It was recognized in the early days that a motion for the previous question could close debate in both Houses of the Congress. This is to be expected when one studies the proceedings in the British Parliament, which was the model for our own. The use in that body of the motion for the previous question apparently dates from 1604, and after 1640 it became a prime instrument of cloture.

Its use to end debate and force a vote in the House of Representatives and States legislatures has been incorrectly called a perversion of the British practice. Fortunately, due to the thorough scholarship of Irving Brant, the eminent biographer of James Madison,⁴ we now have an accurate historical review of this motion practice in the British Parliament and in the United States Senate. I think it

⁴ Mr. Brant, a former newspaper editor and editorial writer, has been engaged for many years in historical research and writing. Five volumes of his *Life of James Madison* have been published.

Henry Steele Commager, professor of history at Columbia University and Amherst College, describing Mr. Brant's scholarship, said:

"Brant's *Madison*, which has now reached five volumes, is, by universal agreement of American historians, one of the most impressive achievements of American historical writing of our generation. Thorough, critical, judicious, comprehensive, well-written, it has the quality that so few biographies have, of doing the job so completely and so well that it does not have to be done over. What is perhaps most impressive about Brant's work is that it is based entirely on original research, that it takes nothing for granted but goes to the sources, that it maintains the very highest standards of rigid scholarship. Whatever may be said of Brant's interpretations—and there will always be differences of interpretation—this can be said with confidence, that Brant's historical scholarship is impeccable and unimpeachable."

would be helpful to quote from testimony given by him before the special subcommittee. Mr. Brant said:

As is well known, the United States House of Representatives began to limit debate in 1811 by means of the motion for the previous question. It was confronted with persistent filibustering against the "measures short of war" that preceded the War of 1812.

The alternatives were to surrender to the minority, or to use the power of the majority to end a purely obstructive debate. The majority acted, not arbitrarily, but after many day-and-night sessions, with the clock running toward a compulsory sine die adjournment.

The United States Senate had a previous-question rule from 1789 until 1806, when it was dropped. The rule read as follows:

"The previous question being moved and seconded, the question from the Chair shall be: 'Shall the main question be now put?' And if the nays prevail, the main question shall not then be put."

The previous question was moved in the Senate on four occasions. In 1789, the nays won and the subject was postponed. In 1792, the question was worded in reverse. It was moved "That the question be not now put." This carried and resulted in postponement. In 1799, the question was moved in the wording required by the rules, "Shall the main question be now put?" The affirmative won, producing cloture. The main question was then put, and it also carried.

On the fourth and last occasion, in 1804, the previous question was moved during the impeachment trial of Judge Pickering. The complicated details of this controversy are set forth in my memorandum on the previous question, and may be found on page 5963 of the Congressional Record of May 9, 1957. Instead of summarizing them here, I shall merely quote two sentences from the diary of Senator John Quincy Adams concerning these proceedings:

"On this resolution it was not without the utmost difficulty that any discussion whatsoever could be obtained."

Again:

"The next struggle was to prevent all debate upon the resolution."

The majority actually did cut off the debate and proceeded at once to defeat the resolution.

Looking into British treatises on parliamentary practice, I found the previous question described as a method of postponement in which the mover voted against his own motion. But if the motion should happen to carry, the effect would be to cut off debate and force an immediate vote on the main question.

I therefore examined the Journals of the House of Commons from 1604 down to the present time and found a truly remarkable record. In the 20th century, the previous question has been moved only twice in the House of Commons, and not once since 1911. In the 17th century, it was moved 736 times. It resulted in cloture 491 times and in postponement 235 times.*

Now, it may be asked, why was it that when the House of Commons came to establish a cloture rule, it didn't simply utilize the previous question for that purpose? Well, that is what it did. On February 25, 1881, a year and a half before the word "cloture" was applied to the practice, the wording of the motion for the previous question was employed for the avowed purpose—a purpose set forth in the Journals—of stopping debate, and the motion is recorded in the index as a motion for the previous question.

A year later, the House incorporated some special provisions and changed the name to "cloture." Thus we have before us, not an American perversion of the British motion, but a kindred line of development in both countries.

To this, let me add one more fact. Before the House of Commons converted the motion for the previous question into a cloture rule, it had been dealing with obstructive debate for some years by treating it as contempt of the House, punishable by suspension. That was done under parliamentary practices dating back to 1604, which gave the Speaker power to stop "superfluous motions, and tedious or impertinent speeches."

These same rules were incorporated in Jefferson's Manual, as a guide to Senate conduct, at a time when the Vice President had unappealable power to decide points of order. *Here is evidence, then, that if the question of altering the Rules of the Senate comes before that body under the general rules of parliamentary practice, it will make no difference whether those general rules are looked for in the practices*

* In a supplementary letter to me, dated December 21, 1957, Mr. Brant made an exhaustive historical analysis of the prevalent misconception that the "previous question" was used primarily in the British House of Commons for the purpose of postponement, showing clearly that the motion was in fact primarily used for cloture.

of our 48 State legislatures or in the British House of Commons. [Emphasis supplied.]

The question of cloture in the Senate must be considered in relation to the nature of that body. The Senate can control the filibuster, it can free itself from the will of a rampaging minority, without the slightest danger of acquiring the ills that afflict the House of Representatives [Mr. Brant has reference to the large membership of the House] and without any possibility of moving into the discipline that marks the [still larger] House of Commons.

Various theories have been advanced to explain why the practice of filibustering as a power of veto developed much more slowly in the Senate than in the House. In fact it was largely brought under control in the House long before it reached the peak of its development in the Senate. One of the reasons that it has been difficult to discover with certainty the history of the early period is that during its first 5 years the Senate sat in secret behind closed doors and only occasionally published extracts from the journal of its proceedings. What knowledge we have of this period has been gained almost entirely from diaries, letters, and other documents written during the period. Furthermore, neither House published verbatim accounts of its proceedings until 1873 and therefore the evidence for some of the early periods is rather meager. In spite of the research difficulties, certain facts have clearly emerged.

The motion for the previous question was from the beginning available in both Houses to close debate and bring an issue to a vote. All that was required was a majority vote. In both Houses the motion for the previous question was itself originally open to debate but not, as some have contended, "without let or hindrance." Certainly, in the early Senate the presiding officer could, pursuant to Jefferson's Manual, rule a Senator out of order for speaking "impertinently or beside the question, superfluously, or tediously."⁶ In other words, the Senate originally had the motion for the previous question, supplemented by the unappealable authority of the Vice President to rule on questions of order, to prevent a filibuster. When necessary, a majority in the early Senate could, with the cooperation of the Vice President, end filibustering tactics and act on legislation.

Thus the early Senate (from 1789 to 1806) had at its disposal the motion for the previous question, supplemented by the Vice President's unappealable authority to stop a Senator in debate for using speech as a dilatory device. The previous question motion, used apparently only four times, was omitted from the rules when they were given a general revision at the beginning of a session in 1806. The deletion occurred without any recorded comment or debate. The reason for dropping this motion from the amended rules in 1806 may well have been that it was not needed to control obstructive

⁶ Both John Adams and Thomas Jefferson were forceful presiding officers during their service as Vice President. It is apparent that they maintained the dignity and decorum of debate in the Senate by vigorous application of the rules.

In sec. XVII of Jefferson's Manual of Parliamentary Practice, Jefferson stated the guiding rule to be: "No one is to speak impertinently or beside the question, superfluously, or tediously," citing precedents from the British Parliament.

In the preface to his manual written while he was serving as Vice President (1797 to 1801), Jefferson said: "The Constitution of the United States, establishing a legislature for the Union under certain forms, authorizes each branch of it 'to determine the rules of its own proceedings.' The Senate has accordingly formed some rules for its own government but these going only to few cases, it has referred to the decision of its President, without debate and without appeal, all questions of order arising either under its own rules or where it has provided none. This places under the discretion of the President a very extensive field of decision and one which, irregularly exercised, would have a powerful effect on the proceedings and determinations of the House."

"Considering, therefore, the law of proceedings in the Senate as composed of the precepts of the Constitution, the regulations of the Senate, and, where these are silent, of the rules of Parliament, I have here endeavored to collect and digest so much of these as is called for in ordinary practice, collating the parliamentary with the senatorial rules, both where they agree and where they vary." [Emphasis supplied.]

speech, which was little used. Also order remained subject to control through the unappealable rulings of the Chair on relevancy and obstruction. The technique of the filibuster as a powerful weapon of obstructing and defeating the majority will in the Senate was still in the future.

Until 1828, the unappealable authority of the Vice President to rule on questions of order remained unchanged. This power to prevent filibusters was supported by the long previous tradition of Senate dignity which frowned on tedious and impertinent speech.⁷

In the House of Representatives, protracted speech, while used to some extent in a mild form prior to 1800, did not become an obvious instrument for obstruction until developed by the erratic genius, John Randolph of Virginia, between 1806 and 1811. After extreme provocation by Randolph and others acting with him, the House in desperation, on February 27, 1811, by a vote of 66 to 13 reversed its previous position and decided that a majority vote in favor of a motion for the previous question closed debate on the pending issue. The written rules of the House were thereafter amended on December 21, 1811, to conform to this decision.

In December 1825, John Randolph was elected to fill an unexpired Senate term. He came over to the Senate from the House bringing with him his penchant for irrelevant and lengthy speeches. John C. Calhoun, then Vice President, refused to maintain the same rigid discipline over debate that most of his predecessors had done.

As a result of Calhoun's failure to control irrelevant and tedious debate, the Senate amended the rule to provide explicitly that the Vice President had this authority on his own initiative and made his rulings subject to appeal. In making the Vice President's rulings appealable the Senate did not intend to weaken Senate discipline but rather, in all probability, to strengthen it by adding the weight of the majority to the decision on questions of order when an appeal was taken.

This change in the rules in 1828 apparently restored to the Senate discipline which had been temporarily lost, and the question of controlling debate in this body was not again a subject of major discussion until 1841. This fact suggests the vigor with which presiding officers after 1828 enforced the rules to prevent obstructive delays. In 1841 during an extra session of Congress called by President Harrison to consider the Government's fiscal policy and the rechartering of the national bank, Henry Clay, the Whig leader in the Senate, threatened the minority with bringing forward some form of cloture rule. The records of this session indicate that while debate was extended no real filibuster took place and probably for this reason no such rule was adopted. At this time the rule of relevancy was still available, and as late as the year 1848 the Senate voted (27 to 2) to require a Senator to take his seat for being out of order because of irrelevancy.

But by 1872, when Vice President Schuyler Colfax ruled that "under the practice of the Senate the presiding officer could not restrain a

⁷ From the records of the debate in February 1828 concerning the powers of the Vice President to rule on points of order, two propositions emerge:

(1) In the opinion of the presiding officers of the Senate after Jefferson they had the authority to rule a Senator out of order for irrelevant speech and they generally considered Jefferson's Manual controlling on the point; and

(2) The tradition of the Senate for dignity in debate down through 1828 at least was a heavy deterrent against filibustering.

Senator in remarks which the Senator considers pertinent to the pending issue," the Senate abandoned its effective control over debate.

From 1872 to 1917, there was neither any cloture rule nor any enforced rule of relevancy. It was during this period that the filibuster matured more or less into its present form.

The first formalized modern cloture rule was not adopted until March 8, 1917. From 1917 until 1949 rule XXII provided that limitation of debate could only be imposed by two-thirds of those Senators voting. In 1949 this percentage was increased to require two-thirds of the entire membership of the Senate to be present and affirmatively voting to end debate. The 1949 revision also amended the rule to subject "any measure, motion, or other matter," or the unfinished business, to cloture control. By such change the Senate was no longer bound by former decisions which had held, in brief, that limitation on debate could be had only on a pending "measure." The 1949 revision thus eliminated correction of the Journal and presentation of credentials, both highly privileged matters, as well as motions to take up new business, as possible sources of filibusters. It also added subsection 3 to rule XXII, which provides in effect that debate could not be limited on any proposal to amend the Standing Rules of the Senate. (See appendix A, p. 27.)

Since 1917 twenty-two votes have been had under rule XXII. On only four occasions was such cloture invoked. Had the 1949 version of the rule been in effect during this time it would have been successful only three times.*

Such a self-imposed obstacle to legislation is rare in the history of parliamentary development. All but 12 States of the Union expressly permit the motion for the previous question to close debate in their upper legislative chambers; 4 of these 12 States have another form of cloture rule. Apparently, only in the senate in Utah and Vermont is the use of the previous question specifically prohibited. It is ironical that many of the Senators most opposed to a reasonable limitation on filibusters have the most effective rules for limiting debate in the upper chambers of their own State legislatures. (A tabulation referring to the rules of State senates is set forth in appendix B to this report (p. 27.))

The British Parliament accepts a specialized form of the previous question as a cloture rule and even the Senate of the Confederate States of America in 1862 provided for the previous question as a method of cloture.

SUBSECTION 3 OF RULE XXII

Subsection 3 deserves separate attention for it is a built-in filibuster device which, if held valid, makes the whole rule so unjust as to require it to fall of its own weight of unfairness. Difficult as it is to obtain the affirmative vote of 64 Senators to limit a filibuster on the usual subjects, on a motion to change rule XXII itself (or for that

* Under the 1917 requirement of two-thirds of those voting the motion for cloture succeeded four times:

	Vote
(1) 1919—Treaty of Versailles.....	78 to 16
(2) 1926—World Court.....	67 to 26
(3) 1927—Branch banking.....	66 to 18
(4) 1927—Bureau of Customs and Bureau of Prohibition.....	66 to 27

Under the present rule requiring 64 affirmative votes the last cloture motion would have failed by 9 votes.

matter any rule of the Senate), because of this provision unanimous consent is required—short of forcing physical exhaustion. It raises minority control to such a degree that the Vice President found it offended the Constitution.

In an advisory opinion the Vice President on January 4, 1957, held in part as follows:

The Constitution also provides that "each House may determine the rules of its proceedings." *This constitutional right is lodged in the membership of the Senate and it may be exercised by a majority of the Senate at any time.* When the membership of the Senate changes, as it does upon the election of each Congress, it is the Chair's opinion that there can be no question that the majority of the new existing membership of the Senate, under the Constitution, have the power to determine the rules under which the Senate will proceed.

Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional. It is also the opinion of the Chair that section 3 of rule XXII in practice has such an effect. [Emphasis supplied.]

Pursuant to the Constitution each House determines its own rules of procedure, and in this context action by each House means a majority of each House. A practical delegation of that power to 1 Senator or to 33 Senators is beyond the power of this body. Its responsibilities are derived from the Constitution and, short of amending that document, there is no way of qualifying this power.

The Supreme Court has held that a House of Congress "may not by its rules ignore constitutional restraints" (*U. S. v. Ballin*, 144 U. S. 1, 5).

To illustrate, assume that the Congress passes a statute which by its terms provides that it may not be amended except by unanimous consent of both Houses. Surely no one would thereafter contend that that law might not be amended by a simple majority vote. In other words, Congress cannot impose such a limitation on itself or on future Congresses which is not imposed by the Constitution. In *Newton v. Board of County Commissioners* (100 U. S. 548), the Supreme Court has held in reference to legislation:

"Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality. This must necessarily be so in the nature of things. It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil."

As a question of power a majority of a quorum of this body may at any time abolish its rules or change its rules. Whatever the rules may say they can be changed by the same power that adopted them. As a matter of power this is necessarily so. That it exists is shown by the fact that on the two most recent occasions efforts to change the rules (1953 and 1957) were defeated by motions to lay on the table, both decided by a majority vote. Of course, Senators may choose to be bound by any restrictions which they care to follow.

I recognize that the problem cannot be solved on the basis of constitutional power alone but must be worked out within both the parliamentary law and the traditions of this body. I am convinced that this can be done, but I think it is important to set at rest any possible question of power to change the rules. The restriction at-

tempted in practical effect in subsection 3 is unconstitutional precisely because it seeks to limit the power granted by the Constitution inherent in the Senate and the responsibility that goes with it.

If subsection 3 is unconstitutional, the method of so deciding, according to the opinion of the Vice President, would be by determination of the Senate itself. Obviously this determination would be by a majority vote. Assuming that it is unconstitutional and therefore of no effect, then it follows that on any motion to change the rules under which the Senate is operating the present cloture provisions of rule XXII, inadequate as they are, nevertheless are available for closing debate which is simply and obviously a filibuster against any proposed change in that rule.

PENDING PROPOSALS

A number of resolutions proposing amendments to rule XXII were introduced during the 1st session of the 85th Congress. They are before the special subcommittee, and may be summarized as follows:

Senate Resolution 17 provides that debate may be limited by a vote of two-thirds of the Senators present and voting 2 days after 16 Senators have filed a petition for this purpose. It further provides that 15 days, exclusive of Sundays and holidays, after the presentation to the Senate of a petition signed by 16 Senators, the Senate by a majority vote of those "duly chosen and sworn" (49 of the 96 Senators) may also impose cloture. Moreover, it eliminates the exemption to any form of cloture of a motion to change the Senate's standing rules (subsec. 3). As in the present rule, even after cloture is voted each Senator may speak for 1 additional hour before the vote.

Senate Resolution 19 would amend rule XXII by providing that cloture may be imposed by a favorable vote of two-thirds of the Senators present and voting, but in no case less than a majority of Senators "duly chosen and sworn."

Senate Resolution 21 would provide for cloture by a majority of Senators voting (if a quorum be present). It would also permit any Senator to yield to another Senator all or part of the 1 hour time for debate allotted to him after cloture is imposed. This resolution also eliminates subsection 3.

Senate Resolution 28 would make cloture subject to an affirmative vote of a majority of the authorized membership of the Senate (49 Senators) after a waiting period of 12 calendar days (excluding Sundays and legal holidays) following the filing of a written motion for cloture signed by 16 Senators. It would also delete subsection 3.

Senate Resolution 29 would simply declare subsection 3 of the rule unconstitutional.

Senate Resolution 30 permits cloture by a vote of two-thirds of the Senators present and voting and eliminates the exception contained in subsection 3. But, in addition, Senate Resolution 30 provides that the Standing Rules of the Senate would continue from one Congress to the next unless duly changed. This last provision attempts to resolve a question of great complexity which is outside the immediate substantive concern with cloture, although being intimately connected with past and future attempts to deal with the problem.

Senate Resolution 32 would provide a waiting period of 5 days (exclusive of Sundays and legal holidays) in lieu of 2 days under the present

rule and would then permit two-thirds of the Senators present and voting to impose cloture. Senate Resolution 32 would also delete subsection 3.

Senate Resolution 171 would allow two-thirds of the Senators present and voting to bring about cloture in lieu of the present rule.

These eight resolutions, even with very considerable differences, have one characteristic in common. They all would make the imposition of cloture easier. Senate Resolution 29 does not do this directly, but does ease the way to change the rule in order to do it.

As I have previously pointed out, since 1917, when the first standing rule on cloture was adopted, there have been 22 votes on motions to impose cloture, but only 4 have been successful. Merely changing a constitutional two-thirds to two-thirds of those voting would have had no effect on the historical results—only four would still have won. By requiring a constitutional majority, a significant difference occurs; nine attempts would have been successful. If only a simple majority had been required, the motion would have carried 15 times.

I do not believe the simple change to a two-thirds voting requirement of Senate Resolutions Nos. 19, 30, 32, and 171 makes significant enough change. I believe the simple majority rule of Senate Resolution 21 is too great a departure to reasonably expect this body to undertake. A table showing the effect of each resolution on past cloture votes follows:

The success of the various proposals if applied to rule XXII cloture votes since 1917

S. Res. 17.....	9 out of 22 (constitutional majority)
S. Res. 19.....	4 out of 22 (two-thirds voting)
S. Res. 21.....	15 out of 22 (majority voting)
S. Res. 28.....	9 out of 22 (constitutional majority)
S. Res. 29.....	(Only effect is to eliminate subsec. 3 from rule XXII.)
S. Res. 30.....	4 out of 22 (two-thirds voting)
S. Res. 32.....	4 out of 22 (two-thirds voting)
S. Res. 171.....	4 out of 22 (two-thirds voting)

On balance, I recommend approval of Senate Resolution 17 as being both moderate and effective. I believe it will enhance the dignity of this body.

As a practical matter we know from the history of the Senate that 16 or more signatures cannot be secured on any cloture petition unless the debate has already become a filibuster.

CONCLUSION

I am a new Member of the Senate and cannot pretend to be an expert in its procedures and traditions, but I have had considerable parliamentary experience in my public life and I have studied constitutional history and the development of Senate procedures to the best of my ability. In addition, I have had the unique opportunity of serving in the Senate at the time of enactment of the first significant civil rights legislation since that enacted immediately following the Civil War.

I respectfully emphasize to the full Committee on Rules and Administration in its deliberations of suggested amendments to rule XXII that neither freedom of speech nor the right of full debate in the Senate is at issue. In advocating a change in rule XXII to permit effective cloture while allowing for full and adequate debate, I seek no abridgment of the liberty of speech, but a just and necessary

restraint upon an abuse which hinders or frustrates the performance by the Senate of its constitutional duty and perverts the reasonable function and objective of the spoken word.

The deep responsibility which rests on the Committee on Rules and Administration in this matter is highlighted by the emergency character of issues facing our country, issues of peace or oblivion, issues which the United States Senate will play a leading role in resolving. As our country and our world move forward at this rapid pace, we cannot permit a procedural roadblock that can paralyze the functioning of the Senate. Important at any time, that fact is of a crucial nature now. I deem it our committee's duty to report to the floor of the Senate a recommendation to eliminate that roadblock.

I submit that Senate Resolution 17 would work a reasonable and necessary change in the rule against filibusters and I recommend that the committee report it favorably to the Senate as soon as possible.

JACOB K. JAVITS.

APPENDIX A

RULE XXII, STANDING RULES OF THE SENATE

(As presently existing with the italics designating the change from the 1917 rule)

2. *Notwithstanding the provisions of rule III or rule VI or any other rule of the Senate, except subsection 3 of rule XXII*, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, *motion or other matter* pending before the Senate, *or the unfinished business*, is presented to the Senate, the Presiding Officer shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the Secretary call the roll, and, upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by two-thirds of the *Senators duly chosen and sworn*, then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, *motion, or other matter* pending before the Senate, *or the unfinished business*, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been presented and read prior to that time. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

3. *The provisions of the last paragraph of rule VIII (prohibiting debate on motions made before 2 o'clock) and of subsection 2 of this rule shall not apply to any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate.*

APPENDIX B

LIMITATION OF DEBATE IN STATE SENATES

1. Alabama (1951): Debate may be limited by a vote of two-thirds of all the elected members upon a motion to that effect offered by the committee on rules (rule 19). No member shall speak more than twice on any question under debate, and none shall, without leave of the Senate, consume more than 1 hour each time (rule 37).

2. Arizona (1951): Previous question authorized (rule XVIII). Presumably requires majority vote. Jefferson's Manual governs when not inconsistent (rule XXIX).

3. Arkansas (1951): Previous question authorized if seconded by at least five members (rule XV). Presumably required majority vote. Dilatory motions forbidden (rule XIV, sec. 19).

4. California (1951): Previous question authorized by majority vote (rule 41).

5. Colorado (1951): Previous question authorized by majority vote (rule IX, subdivision 2). Debate may be limited not less than 1 hour after adoption of motion to that effect by majority vote (rule IX, 3).

6. Connecticut (1951): No previous question allowed (rulings, p. 39). No member may, without leave, speak more than twice on same question (rule 11). Remarks must be germane (rulings, p. 44).

7. Delaware (1951): Robert's Rules of Order, Revised, to settle all parliamentary procedure (rule 38).

8. Florida (1951): A senator may not speak longer than 30 minutes nor more than twice on any one question without leave of the senate (rule 20). Jefferson's Manual governs whenever applicable and not inconsistent with standing rules (rule 77).

9. Georgia (1957): Previous question authorized by majority vote (rule 58). All individual speeches on bills and resolutions shall be limited to 30 minutes unless by leave of the senate (rule 15). The president of the senate "shall in his discretion suspend irrelevant debate and command silence whenever he may deem it needful" (rule 1).

10. Idaho (1947): Previous question authorized (rule 4), presumably by majority vote. General rules of parliamentary practice to govern in all cases not provided for (rule 23).

11. Illinois (1951): Previous question authorized (rule 54). No senator may speak more than 15 minutes at any one time without the consent of the senate (rule 33). Robert's Rules of Order govern provided not inconsistent (rule 72).

12. Indiana (1949): Previous question authorized (rule 17), presumably by majority vote. Jefferson's Manual applies to all points not covered (rule 52).

13. Iowa (1951): Previous question authorized by majority vote (rule 20). Robert's Rules of Order govern where not inconsistent (rule 42).

14. Kansas (1949): Previous question authorized (rule 27), apparently by majority vote (rule 20). No senator may speak more than twice on the same day on the same subject without leave of the senate (rule 7). Robert's Rules of Order apply whenever senate rules do not apply (rule 76).

15. Kentucky (1954): Previous question authorized by majority of senators voting (sec. 50).

16. Louisiana (1948): Previous question authorized by majority vote (rule 17). Debate may be limited by majority vote so that no senator shall speak longer than 1 hour at one time without leave (rule 9).

17. Maine (1957): No rule on limitation of debate but Reed's Rules and Cushing's Law and Practice to govern whenever applicable and not inconsistent with standing rules (rule 37).

18. Maryland (1950): Jefferson's Manual to govern when not inconsistent with standing rules (rule 92).

19. Massachusetts (1956): Debate may be closed not less than 1 hour after adoption of motion to that effect (rule 47), presumably by majority vote. Cushing's Manual shall govern when not inconsistent with standing rules (rule 62).

20. Michigan (1951-52): Previous question authorized by majority vote of the senators present and voting (rule 65).

21. Minnesota (1955): Previous question authorized by majority vote (rule 24). Jefferson's Manual to govern when not inconsistent with standing rules (rule 51).

22. Mississippi (1948-52): Previous question authorized (rule 65), presumably by majority vote since Rules of United States House of Representatives govern on all questions not in conflict with rules (rule 59).

23. Missouri (1951): Previous question authorized by majority vote (rule 76).

24. Montana (1951): Previous question authorized by majority vote (rule XIV). No senator shall speak more than twice in any one debate on the same day and at the same stage of the bill in exclusion of those who have not spoken (rule XII, 4).

25. Nebraska (1950): Previous question authorized by majority of elected members (rule 10, sec. 9). Gregg's Handbook shall govern when not inconsistent (rule 1). No member shall speak more than twice upon any one question during one legislative day (rule 4, sec. 10). Each day shall be considered a legislative day unless majority votes otherwise (rule 7, sec. 6).

26. Nevada (1951): Previous question authorized by majority vote (rule 18). Mason's Manual shall govern (rule 55).

27. New Hampshire (1951): Previous question authorized (rule 9) presumably by majority vote. No member shall speak more than twice on same question on same day without leave (rule 4).

28. New Jersey (1951): No senator shall speak more than three times "on any subject of debate" without the leave of the senate (rule 47).

29. New Mexico (1951-52): Previous question authorized on demand of majority of members present (rule 54). Robert's Rules of Order to govern in all cases not inconsistent with standing rules (rule 74).

30. New York (1951): Debate may be limited by majority vote wherever any bill, resolution, or motion shall have been under consideration for 2 hours (rule XIV, sec. 3).

31. North Carolina (1951): Previous question authorized (rule 57), presumably by majority vote (rule 63).

32. North Dakota (1951): Previous question authorized (rules 18, 21), presumably by majority vote. Ordinary member may speak only 10 minutes on same subject, then 5 minutes, until every other member choosing to speak shall have spoken, without unanimous consent (rule 13). Robert's Rules to govern when applicable and not inconsistent (rule 77).

33. Ohio (1951): Previous question authorized on demand of three senators (rule 89), presumably by majority vote. No senator shall speak more than twice on the same question except by leave (rule 74) and may read relevant matter "of reasonable length" (rule 75). Any recognized standard authority on parliamentary procedure may be received as authority for all cases not provided for (rule 117).

34. Oklahoma (1951): Previous question authorized by majority vote (rule 39). No senator shall speak more than 20 minutes on any question without the unanimous consent of the senate, and only 10 minutes during debate in considering bills on general order (rule 107).

35. Oregon (1951): Previous question authorized (rule 38) by majority vote (rule 69). No member shall speak more than twice on any question without leave (rule 25). After 50th day of session, member may not speak longer than minutes but may yield his time (rule 26). Robert's Rules of Order, Revised, to govern.

36. Pennsylvania (1951-52): Previous question authorized by majority vote (rule 41). Jefferson's Manual to govern whenever applicable (rule 34).

37. Rhode Island (1951): Previous question authorized (rule 21). Debate may be closed on motion (presumably by majority vote) after any matter shall have been considered for 2 hours (rule 23).

38. South Carolina (1951): Debate may be limited by two-thirds of the senate (rule 14). No senator may speak more than 2 hours in any one legislative day on any one bill or resolution (rule 8).

39. South Dakota (1951): Motion for previous question authorized but must be seconded by one-seventh of the members elected and approved by a majority of those present (rule 53).

40. Tennessee (1949): Previous question authorized by vote of two-thirds of members present: if rejected, committee of rules may, upon demand of a majority of the members of the senate, submit rule fixing of limiting time for debate for adoption by majority of senate (rule 20).

41. Texas (1949): Previous question authorized by majority vote (rule 101).

42. Utah (1945): Previous question specifically forbidden (rule 45). No senator shall speak more than twice in any one debate on the same day, and at the same stage of the bill without leave (rule 42). Robert's Rules of Order govern whenever applicable and not inconsistent with senate rules.

43. Vermont (1950): Previous question forbidden (rule VIII, 55). No senator shall speak more than twice to same question without leave (rule X, 65). Robert's Rules of Order shall prevail (rule XIII, 82) on parliamentary questions not covered by the rules.

44. Virginia (1950): Previous question authorized if seconded by majority of senators present (rule 50), presumably by majority vote. Jefferson's Manual to be used to construe rules (rule 68).

45. Washington (1951): Previous question authorized by majority vote (rule 30).

46. West Virginia (1951): Previous question authorized by majority vote (rule 53).

47. Wisconsin (1949): Previous question authorized by majority vote (Manuel, p. 40) on demand of six senators (82).

48. Wyoming (reprinted 1951): Previous question authorized when seconded by three members and approved by majority vote (pp. 19, 20).

GENERAL PARLIAMENTARY MANUALS ON PREVENTION OF OBSTRUCTIVE TACTICS

Robert's Rules of Order, Revised (1943): Debate may be closed by a two-thirds vote of the assembly or by adopting the motion for the previous question which requires a two-thirds vote of those present and voting (sec. 44). No dilatory, absurd, or frivolous motions are allowed (sec. 40). "Whenever the Chair is satisfied that members are using parliamentary forms to obstruct business he should either not recognize them or else rule them out of order" (sec. 40).

Jefferson's Manual (1797): "No one is to speak impertinently or beside the question, superfluously or tediously" (sec. XVII). No man may speak more than once on the same bill except to clear up a matter of fact or to explain a material part of his speech (sec. XVII). Previous question authorized by majority vote (secs. XXXIV, XLI).

INDIVIDUAL VIEWS OF MR. TALMADGE

Any proposal for further limiting debate in the United States Senate is a matter of grave consequence which, by its very nature, demands that it not be acted upon capriciously or without the benefit of thorough study and full consideration of all its ramifications.

It is out of that deep conviction that I insisted upon comprehensive hearings on the eight resolutions which sought that end, that I have given long and careful study to the transcript of testimony taken at those hearings and to all related materials, and that I herewith set forth in the most earnest terms at my command the compelling reasons why Senate rule XXII must be upheld as written.

Although the question of cloture has been a recurring issue before the Senate since 1917 and hearings previously were held on the subject in 1947, 1949, and 1951, it was not until 1957 that any effort was made to determine the thinking and wishes of the American people on this issue so fundamental to the protection and preservation of their constitutional freedoms.

At my urging a Special Rules Subcommittee composed of Senator Jacob K. Javits of New York and myself held extensive hearings during last June and July and heard, either in person or by prepared statement, from 132 Senators, spokesmen for organizations with national memberships, and other knowledgeable individuals. While previous hearings had been confined largely to testimony from Senators and paid spokesmen for partisan pressure groups, the 1957 hearings heard from such well-known and respected organizations as the American Legion, the Veterans of Foreign Wars, and the Sons and Daughters of the American Revolution.

As the result of the labors of the subcommittee a printed transcript of 364 pages—which unquestionably is the most comprehensive document of its kind ever assembled—now is a matter of official record and, for the first time, Senators have as a basis for informed action on this subject a presentation which encompasses the grass-roots sentiments of their constituents.

It must be recognized that the Senate of the United States, as an instrumentality of the States and their citizens, is the property of every American and does not belong to the individuals who transiently occupy the seats in its Chamber. Individual Senators have no proprietary rights in the operation of the Senate except as they act as creatures of the will of the States and constituents they represent.

Therefore, it is certain that no Senator honestly seeking to be responsive to the will of those he serves will wish to close his mind on this issue before giving careful study and consideration to the transcript compiled by this special subcommittee and the unmistakable conclusions of public opinion it affords.

An analysis of that transcript discloses that more than three-fourths of those presenting their views to the subcommittee expressed approval of Senate rule XXII as it now stands and confidence

in it as the major bulwark of the people in the maintenance of constitutional government and individual liberty in this Nation.

Further analysis makes plainly evident the fact that those favoring a further erosion of freedom of speech on the floor of the United States Senate could offer no sounder reason for their position than their desire to see enacted into law force legislation of the character which was resoundingly defeated by the 1st session of the 85th Congress.

Those who predicated their support of changes in Senate rule XXII on the contention that no civil rights measure could be enacted under its present provisions saw their argument exploded in the action of the 1st session of the 85th Congress in placing the Civil Rights Act of 1957 on the statute books without resort to rule XXII.

That argument thus disposed of, there is only one conclusion which can be drawn logically and dispassionately from the actions of those who persist in their efforts to change rule XXII: That their onslaught to stifle freedom of speech on the floor of the Senate is an attack not only on the Senate itself but also on the stature, perquisites, and prerogatives of each Senator in national affairs and every other responsibility incident to the senatorship.

It is an attack which threatens the whole fabric of our form of government and strikes at the very vitals of representative government.

It is an attack which seeks to destroy the constitutional balance of Federal and State power and deal a death blow to the States as political entities.

It is an attack which seeks to make big government bigger and to centralize more and more power in Washington in a government less responsive to the wishes of the citizenry.

It is an attack which seeks to eliminate the spirit of compromise and respect for divergent views which has characterized the Senate for more than one and one-half centuries and to substitute for it the brute force of numbers.

It is an attack which seeks to put Congress only a short step from the unicameral system and which has as its ultimate aim the destruction of the seniority system which has given Congress its stability and sense of responsibility over the years.

Standing Senate rule XXII is a wise rule—the result of compromise—which protects full and free discussion of legislative proposals yet serves as a barrier to thwart those few Members who would abuse the privilege of free speech.

Standing Senate rule XXII is fair and to change it again would be to militate against the historic tradition of unlimited debate in the Senate.

The first change in rule XXII to authorize cloture was adopted in 1917 following a bitter controversy over the failure in the Senate of a proposal for arming American merchant ships prior to this Nation's entry into World War I. It was offered by Senator Martin as a "war measure" and, after debate at length, was adopted March 8, 1917, by an overwhelming vote of 76 to 3.

It required the votes of two-thirds of the Senators present and voting to invoke cloture.

Under a later ruling in 1948 by President Pro Tempore Arthur H. Vandenberg, it was held that the words "pending measure" in the Martin cloture amendment to rule XXII applied only to bills and

resolutions and not to motions. That meant, of course, that debate on a motion to take up a bill was not subject to cloture under any circumstance.

It was in 1949 that the compromise on rule XXII was effectuated whereby its provision for cutting off debate was extended, not only to apply to any "pending measure" but also to "any measure, motion, or other matter pending before the Senate," and the requirement of "two-thirds of those voting" was changed to "two-thirds of the Senators duly chosen and sworn."

That was the compromise which still is in effect today.

While the two-thirds vote requirement to shut off debate was strengthened by the compromise, at the same time the dread threat of gag rule was extended over every facet of Senate procedure.

Those now attempting to make cloture easier and thus ultimately destroy freedom of debate in the Senate are not satisfied with what is a fair and reasonable compromise.

They complain that standing rule XXII in its application thwarts the wishes of the majority. However, authoritative observers of the American legislative process hold that a determined majority of Senators can find ways of passing any measure it desires without resorting to changing the very character and complexion of the body itself. The 1st session of the 85th Congress affords a case in point.

To argue that rule XXII by holding forth a threat of prolonged debate serves to prevent Senators from insisting upon legislation with controversial features is to challenge the depth and sincerity of the convictions of all 96 Senators.

Ample means are available at present to overcome what a majority at any time may feel to be needless obstruction in debate. The use of protracted sessions and strict enforcement of all Senate rules afford adequate safeguards to bring to an end even the most determined and prolonged debate. Whenever any issue of overriding importance to the welfare of the Nation arises, it goes without saying that debate will be limited accordingly.

Standing rule XXII permits limitation of debate by two-thirds of the Senate membership (64 Senators) 2 days after a petition has been submitted by 16 Senators. Thereafter debate is limited to 1 hour for each Senator. Cloture cannot be applied to a proposal to change the rules.

Frankness compels the observation that the ultimate objective of opponents of free debate in the Senate is cloture by a simple majority vote of Senators present at any given time. Eventual adoption of such a rule would make it possible for 25 Senators, a majority of a quorum, to impose gag rule.

Historically, freedom of debate in the Senate is not a party or sectional device. It has served the whole country and both political parties well at one time or another. History records the fact time and again that the benefits of free debate far outweigh the few instances where the privilege to speak thoroughly may have been abused—and only the most partisan would not admit there have been some abuses.

Any further concession on the part of proponents of free debate will have the disastrous eventual result of majority cloture. Then the process of erosion will turn to the seniority system and other long established and heretofore unchallenged procedures and precedents.

Under our plan of government the United States Senate is the great safety valve. It is a body which can prevent impassess from developing in our Nation and it is the best instrument for resolving seemingly irreconcilable conflicts. It has afforded a permanent basis for American unity; and that basis has its foundation in the right of every Senator, regardless of the size of the State from which he comes, to talk things out before the country.

The only real protection remaining for States which find themselves from time to time in the minority on any given issue in the Senate is a safe two-thirds rule on limiting debate.

Through the medium of free debate, the Senate provides the machinery by which all measures affecting the lives, fortunes, and sacred honor of the American people can be put to the critical test of unhurried examination by the collective intellect of a body expressly created as one of our governmental checks and balances.

Those who would destroy this right contend it imperils democracy and thwarts the wishes of the majority. In their zeal they forget that its very purpose is to provide a restraint upon the abuses of unbridled majority rule and, even more important, to protect the rights of the minorities of this Nation.

Our wise Founding Fathers were aware that the excesses of democracy can be as fearful in their consequences as are the excesses of totalitarianism. To safeguard against both extremes they gave us our republican form of government with its delicately contrived system of checks and balances of which freedom of debate in the Senate is at least an implied, if not actual, part.

If minority rights are trampled in the Senate there is only one remaining remedy available to those who do not happen to be with the majority; that is, affiliation with a multiplicity of splinter parties. No greater catastrophe could befall our country than such enforced destruction of the two-party system and substitution of a countless number of political parties.

It does not take much vision to perceive that under such circumstances a small militant minority, exercising the balance of power, could be catapulted into a position of leadership where it could inflict great harm on constitutional government and democratic processes.

Since its establishment the Senate of the United States has refused to be bound in a straitjacket. Its rules have had [the flexibility the nature of the body demands.

Despite the protestations of some of its detractors, it is respected as the guardian of fundamental liberty in this country and enjoys the confidence and admiration of the masses of this Nation and of the world.

By and large, the Senate has adhered to the cardinal rule that no extreme or far-reaching legislation affecting the basic rights of the people of the United States be adopted without substantial unanimity and support of the Senators and their constituents.

Union, not division, has been the Senate goal.

The right of every Senator to freedom of debate is the great buffer which protects both the smaller and larger States from imposing upon each other.

Freedom of debate is the only effective screen which the people have against hidden defects, both unintentional and calculated, which escape detection in the hasty process of passage by the House of Representatives. Without this backstop for the people, unfairness,

discrimination, and special privilege for the favored few might well come to be the rule rather than the exception.

Even a cursory study of constitutional history and an examination of contemporary documents penned at the time of the drafting of the Constitution and its approval by the States show beyond any doubt that the creation of the Senate, as a continuing council of States wherein each has an equal voice, was the price of forming the General Government.

At the formation of this Government the Constitutional Convention stood for the protection of private economic interests; a stronger central authority; a stabilized monetary policy; orderly legal processes; and for a republican form of government as opposed to an unlimited democracy.

The whole motivating spirit of the Convention—not expressed but clearly understood—was to make the Nation safe from the tyranny of unchecked majorities. The intention is unmistakable as one may deduce from James Madison's own notes and also from the papers of most of the delegates.

No doubt if Madison, Thomas Jefferson, Alexander Hamilton, and John Jay could return to the scene today they would be shocked at the manner in which some of their writings have been distorted out of context, particularly with reference to the question of the nature of the Senate and freedom of debate therein.

A favorite device of the advocates of gag rule is to quote Alexander Hamilton's contributions to the *Federalist* in support of their position.

An examination of these quotations in the light of context and the theme of the entire series of letters reveals such quotation to be a complete distortion of truth.

The whole spirit pervading *The Federalist* and the elucidation of its component letters regarding the foundation of the Senate cry out for the maintenance of freedom of debate in that body.

Properly assaying the true meaning of *The Federalist* requires an understanding of the times in which the letters were written.

It must be borne in mind that Hamilton and the other patriots of that day were writing about inadequacies of the loosely drawn Articles of Confederation and in favor of the adoption of a clear-cut new Constitution. In the quotations most frequently attributed to Hamilton on this subject, he was detracting from the Articles of Confederation in a concerted effort to convince the people that the new Constitution was good for the country and should be ratified by the States.

Hamilton is often quoted from letter XXII in which he stressed the weakness of the requirement that legislation adopted by the Continental Congress receive the approval of three-fourths of all the States. That quotation, while applicable to that situation, by no stretch of the imagination can rightly be applied to free debate in the Senate.

Another quotation frequently attributed to Hamilton by proponents of majority cloture is the one referring to the treaty-making power and other "resolutions." There must have been strong sentiment for a constitutional two-thirds requirement before Senate approval, for Hamilton sought to allay the fears of the people urging the view that a simple two-thirds would be sufficient in any circumstance for protection against abuses.

By no rule of logic can the language quoted from Hamilton in letter LXXV be applied to the fundamental right of a State to be heard from fully through its Senators in Senate debate.

Thus, it is a gross distortion when we have those of the present seeking to apply the words of the great patriots of the past in an effort to detract from the Constitution and the principles of government which they established when, in reality, those quotations when written were in reference to the Articles of Confederation.

There is no comfort for any proponent of gag rule in the Senate in the words of any of these founders of our system of government. Jefferson, for example, wrote in his *Manual of Parliamentary Procedure*:

The rules of the Senate which allow full freedom of debate are designed for protection of the minority, and this design is a part of the warp and woof of our Constitution. You cannot remove it without damaging the whole fabric. Therefore, before tampering with this right, we should assure ourselves that what is lost will not be greater than what is gained.

Hamilton foresaw just such a day as this when he wrote in *The Federalist*:

* * * There are particular moments in public affairs, when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind?

It is significant that, in urging the adoption of the Constitution by the States, Hamilton emphasized that the Senate is far more than an "upper house" in the commonly accepted sense of the term:

I am not unaware of the circumstances which distinguish the American from other popular governments, ancient as well as modern * * * Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves * * * The people can never willfully betray their own interests; but they may possibly be betrayed in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

Another phase of this question is whether the United States Senate is a continuing body and whether the Senate is the sole judge of the rules under which it functions.

The *Federalist* sheds important light on these subjects.

For instance, Hamilton in letter LXII stresses that the Senate is more than just an extended version of the House. He alludes to the qualifications required of Senators, the nature of the senatorial trust as contradistinguished from membership in the lower branch, and emphasizes the "necessity of some stable institution in the Government."

In letter LXIII he wrote:

* * * An assembly (the House of Representatives) elected for so short a term (2 years) as to be unable to provide more than one to two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year could be justly made to answer for plans or improvements, which could not be accomplished in less than half a dozen years.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as

require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects.

Those words adequately describe the role of the Senate and prove beyond all doubt the deliberate intent of the framers of our Government to create it as a continuing body.

Now, as to the question of whether the rules of the Senate carry over from session to session and are permanent, valid, and subsisting until changed by proper procedure, let us look to John Jay's Federalist letter LXIV for the incontrovertible answer:

It was wise, therefore, in the (Constitutional) Convention to provide, not only that the power of making treaties should be committed to able and honest men, but also that they should continue in place a sufficient time to become perfectly acquainted with our national concerns, *and to form and introduce a system of the management of them.* The duration prescribed, is such as will give them an opportunity of greatly extending their political information, and of rendering their accumulating experience more and more beneficial to their country.

Nor has the Convention discovered less prudence in providing for the frequent elections of Senators in such a way, as to obviate the inconvenience of periodically transferring these great affairs entirely to new men—for, *by leaving a considerable residue of old ones in place, uniformity and order, as well as a constant succession of official information will be preserved.*

That language shatters once and for all time the contention that the life of the Senate is only 2 years and that its rules must be altered from session to session.

The system "*formed and introduced*" in the Senate to manage and resolve grave issues of national concern has served the country well.

The tragic inconvenience of periodic upheaval in this institution of the Government has been prevented; "*uniformity and order*" insured.

How has this been done?

There can be only one answer in the light of history: this body has functioned through wise and just rules that have withstood the tortuous test of time.

It is only reasonable and logical, therefore, that any proposed change in those rules should be open to the fullest and most completely unfettered debate.

If freedom of debate, the committee system, and the seniority system are destroyed or weakened in the Senate, this body will become nothing more than a useless appendage of the House of Representatives.

There has been much ado about the authority for moving the previous question having been included in the early rules of the Senate.

Though such was the case, the rule was resorted to only 4 times and used only 3 times in 22 years.

It can safely be concluded from that experience that any limitation on free expression was obnoxious to the patriots of that day. Certainly, it may be assumed further that this was the underlying reason that the rule was dropped by the Senate during the time Jefferson was President.

The fact of the rule being in existence during these first years is hardly significant. It means merely that it was carried over automatically from the Continental Congress and was later discarded.

It is argued by the opponents of free debate that the Senate of the United States is the only place in the world where the gag rule does not prevail.

My answer to that is: "So what?"

The patriots who established this Government were free men and did not elect to surrender their new and hard-won liberties nor to copy the governments of foreign lands where freedom either did not exist or came and went with the political tide.

The point also has been made that the Senate's cloture rule is more liberal than similar rules of most State senates. To make such a comparison is to misconstrue totally the unique position which the United States Senate occupies in our Federal-State structure.

As we have seen from Alexander Hamilton's writings, the Senate is not an "upper house" of a national legislature in any sense of the word.

The Senate exercises quasi-executive functions in relation to the treaty-making power.

The Senate sits as a judicial body in impeachment proceedings.

The Senate must give its advice and consent to the appointments of the Executive.

The Senate is the repository of State sovereignty on the National level.

The Senate cannot legitimately be compared in any terms with either State senates or with the assemblies of foreign nations.

One reason given by those advocating that the Senate of the United States surrender its freedom of debate is that the House of Commons of the British Parliament has done so.

What they either forget or choose deliberately to ignore is that much of the difficulty experienced by Great Britain as a nation and as a world power has stemmed directly from the loss of freedom of debate in the House of Commons and a steady diminution in the power of the House of Lords.

The British system of government is not and never has been comparable to the constitutional system of government created here.

Every right the Englishman has is at the mercy of a majority in the House of Commons.

It was not always so.

A little over 75 years ago unlimited debate in Commons and the veto power in the House of Lords served as mighty barriers against the evils of state socialism. Those two safeguards restrained competing political parties from inflicting too great harm on each other or on the country, but they were thorns in the flesh of the Liberal and later the Labor Party.

The former Deputy Prime Minister of the Labor Government, Herbert Morrison, writes in his book, *Government and Parliament*, of how free debate was lost in the House of Commons:

* * * Although there had been talk about the need to expedite business by curtailing Private Members' rights, it was only in the panic which followed the successful Irish obstruction in the 1880's that the House parted with its long preserved liberties. One of the most far-reaching of these reforms was the closure (that is to say, the motion "That the Question be now put"). It was first used by Mr. Speaker Brand, on February 2, 1881, who, in the course of long debate and considerable obstruction, decided to put the question without further debate. (Before the introduction of the closure Members could proceed with debate indefinitely.) * * * And it was eventually decided that a 3 to 1 majority would be required for a closure in a house of not less than 300 members.

Mr. Morrison goes on to explain that the standing order governing closure in Commons today requires only a simple majority which cannot be less than 100 members.

Before 1911, Lords possessed absolute veto power over Commons. As a result of the rejection of the finance bill of 1909 by the Lords, the Liberal Government of that day appealed to the people and won a majority on the issue. A measure to curb the powers of Lords was offered, and a promise obtained from the King that, should the Lords reject the bill, he would create a sufficient number of peers to insure its passage.

The threat was effective and in 1911 the Parliament Act became law. By it the veto of Lords was curtailed for a period of 2 years for bills passed by the Commons in three successive sessions (whether of the same Parliament or not) and was abolished altogether in respect to appropriations.

The Labor Party in its pre-election platform of 1945 stated:

We give clear notice that we will not tolerate obstruction of the people's will by the House of Lords.

On October 31, 1947, the Parliament bill was presented to the House of Commons and passed on December 10. It was rejected by the House of Lords on June 9, 1948.

The bill provided that, in the future, such legislation might be passed into law, notwithstanding the rejection of the House of Lords, if (1) it had been passed by the House of Commons in 2 successive sessions, instead of 3 as provided for by the Parliament Act of 1911, and (2) 1 year (instead of 2 years) had elapsed between the date of the first second reading in the House of Commons and the date on which it was passed finally by Commons for a second time.

The bill further restricting the power of Lords was again passed by the Commons on September 21, 1948, and again rejected, September 23, 1948.

The bill was passed for the third time by the Commons on November 14, 1949. It was rejected by the Lords on November 29, but received the royal assent and became law on December 16, 1949, under the terms of the Parliament Act of 1911.

Thus was removed from the Government of Britain a great measure of its stability and strength and the whole world was the loser.

We know the rest and those who have the vision to see beyond the transitory objectives of political advantage should be able to detect the grave danger of this bit of history repeating itself in the United States today.

It is interesting to note in retrospect that the House of Lords—although liquidated in all but name by an unbridled majority in its sister chamber—has clung steadfastly to the principle of freedom of debate. It still has only two standing rules governing debate: that a peer can speak only once on the same motion and debate must be relevant to the question before the House.

Much has been made of the fact that standing rule XXII gives "power" to the individual Senator which those so contending maintain should be possessed by the majority, right or wrong. Such a view is contrary to the origin of the Senate as the voice of the individual States in the Federal establishment.

There is no escaping the fact that proposals for further limiting debate in the Senate would have the effect of negating the power, the prestige, and the perquisites of the Senator as an individual officeholder and of the Senate as a protective instrumentality of the Federal Government.

The smaller States rightly were given equal representation in the Senate but this influence will be dissipated in direct proportion to the degree of any revision of rule XXII.

During the last quarter of a century we have seen an unending encroachment on the powers of Congress by both the executive and judicial branches. One by one its powers, and the prerogatives of its Members, have been dissipated either by delegation or acquiescence.

Congressional powers over the purse, over patronage, over the budget, over trade, over war powers and all other phases of government operation have slipped away or have been greatly reduced.

It is time to reverse this trend and the proper place to start is by refusing to surrender the right of freedom of speech on the floor of the Senate.

No more eloquent defense of the right of the individual Senator to the power which comes through freedom of debate has ever been penned than that written by the distinguished and erudite journalist, William S. White of the New York Times, in his book, *Citadel—The Story of the United States Senate*. It is appropriate that his conclusions be considered here:

Conscious though one is of the abuse of senatorial power, one glories nevertheless in the circumstances that there is such a place, where big Senators may rise and flourish from small States.

For the Institution protects and expresses that last, true heart of democratic theory, the triumphant distinction and oneness of the individual and of the little State, the infinite variety in each of which is the juice of national life.

It is perhaps often forgotten that the democratic ideal is not all majority; that, indeed, at its most exquisite moments the ideal is not for the majority of all but actually for the minority of one.

The Senate, therefore, may be seen as a uniquely constitutional place in that it is here, and here alone, outside the courts—to which access is not always easy—that the minority will again and again be defended against the majority's most passionate will.

This is a large part of the whole meaning of the Institution. Deliberately it puts Rhode Island, in terms of power, on equal footing with Illinois. Deliberately by its tradition and practice of substantially unlimited debate, it rarely closes the door to any idea, however wrong, until all that can possibly be said has been said, and said again. The price sometimes is high. The time killing, sometimes, seems intolerable and dangerous. The license, sometimes, seems endless; but he who silences the cruel and irresponsible man today must first recall that the brave and lonely man may in the same way be silenced tomorrow.

* * * For illustration, those who denounce the filibuster against, say, the compulsory civil rights program, might recall that the weapon has more than one blade and that today's pleading minority could become tomorrow's arrogant majority. They might recall, too, that the techniques of communication, and with them the drenching power of propaganda, have vastly risen in our time when the gaunt aerials thrust upward all across the land. They might recall that the public is not always right all at once and that it is perhaps not too bad to have one place in which matters can be examined at leisure, even if a leisure uncomfortably prolonged.

* * * It is, in the very nature of the Senate, absolutely necessary for the small States to maintain the concept of the minority's veto power, having in mind that it is only within the Institution that his power can be asserted or maintained.

* * * Where a powerful majority really wants a bill it will find means to have its way, cloture or no cloture.

In considering the implications of "majority rule," one must not lose sight of a few simple facts about the origin and composition of the Senate.

It is impossible to apply to the Senate with any degree of accuracy the principle of popular majority rule as we usually consider it. The

very composition of the United States Senate where all States have an equal vote prevents such an application.

It is possible for various combinations of 40 Senators to represent anywhere from 20 to 80 percent of the population of the Nation.

All of the great injustices of history have been committed in the name of unchecked and unbridled "majority rule." The late Senator James A. Reed of Missouri, in one of the most forceful speeches ever delivered before the Senate, observed with great truth:

The majority crucified Jesus Christ.
 The majority burned the Christians at the stake.
 The majority drove the Jews into exile and to the ghetto.
 The majority established slavery.
 The majority chained to stakes and surrounded with circles of flame martyrs through all the ages of the world's history.
 The majority jeered when Columbus said the world was round.
 The majority threw him into a dungeon for having discovered a new world.
 The majority said that Galileo must recant or that Galileo must go to prison.
 The majority cut off the ears of John Pym because he dared advocate the liberty of the press.

Some of the terms of reference to standing rule XXII are both shocking and disturbing not only because they insult the intelligence and integrity of those privileged to serve their States in the Senate but also because of the manner in which they distort facts and ignore history to support partisan ends.

A few choice current examples are that Senate rule XXII—

Must be changed to conform with the challenge of Russian missiles and sputniks.

Paralyzes decision in the Senate.

Is archaic.

Would have been opposed at the time of the adoption of the Constitution.

Is contrary to the views of the Founding Fathers.

Violates fundamental parliamentary law.

Is at odds with early Senate procedures.

Is not supported by the national interest.

Is not supported by commonsense.

Is not supported by history.

Stultifies Congress.

Violates the Constitution.

Is offensive to the dignity of the Senate.

Has destroyed the Senate's deliberative function.

Thwarts discipline in the Senate.

These and many more similar unfounded assertions and puerile implications which could be cited are offensive to the character of every Member of the Senate and to the memory of those now departed who either served under or helped draft standing rule XXII.

I am indignant at the implication that I, or any other Member of the Senate, would consent to serve under, let alone defend, any rule of procedure which could to any degree be as reprehensible and alien to the American concept as opponents of standing rule XXII would picture it to be.

Now is no time to forget the lessons of history.

Before tearing down a chamber that has served the United States and its people well, Senators should search for truth by asking themselves:

Are we so blind as not to realize that if free debate perishes in the Senate our leaders in the future will be rising like jacks-in-the-box to move the previous question?

Do we not know that this evil thing will become the weapon of the majority party or coalition to be resorted to habitually in stifling all opposition?

Do we not know that when such an event comes to-pass minority thought and opinion will lie prostrate and defenseless against the tyrannical abuses of any transient majority that might for the moment occupy the seats of the Senate?

Have we forgotten that everyone, at one time or another, belongs to a minority?

Have we lost sight of the unchanging truth that unbridled majority sway without proper restraint is mob rule?

Are our memories so short that we have forgotten the maxim that free government destroying dissenting opinion, thereby destroys itself?

Have we forgotten that in such circumstances dictatorship of one form or another steps into the vacuum thus created to wrest all rights from the people, minorities and majorities alike?

The alternative to unlimited debate is gag rule, which was aptly defined by the late Senator Reed as "the last resort of the legislative scoundrel."

The issue at stake here is far more fundamental than any mere question of legislation. It is as basic as our freedom itself. Gag rule, and its stepchild, censorship, are abhorrent to and incompatible with our American heritage.

The Senate has proved itself worthy of the rules by which it now operates.

Commonsense and the Nation's survival dictate that our time-honored procedures should not be subjected to whimsical tampering on the slightest provocation.

It is essential to our interests as a nation that we keep vital and inviolate our system of checks and balances.

With unlimited debate in the United States Senate, all Americans have the assurance that no act jeopardizing their rights will ever be proposed without some Member of the Senate having the opportunity to resist it and to warn the Nation of its consequences.

Franklin D. Roosevelt, while Governor of New York, foresaw just such dangers to the Republic, in a radio address on States rights, delivered March 2, 1930, when he warned:

The moment a mere numerical superiority by either States or voters in this country proceeds to ignore the needs and desires of the minority, and, for their own selfish purposes or advancement, hamper or oppress that minority or debar them in any way from equal privileges and equal rights—that moment will mark the failure of our constitutional system.

His warning, valid then, is even more so today.

It is a concern Americans share fullest in this hour.

It is a concern which the Senate can ignore only at its own peril.

It is a concern which the Senate can allay only by upholding standing rule XXII as written.

HERMAN E. TALMADGE.

INDIVIDUAL VIEWS OF MR. CURTIS

I do not favor Senate Resolution 17.

A number of scholarly statements have been written setting forth the historical background of the rule in the United States Senate allowing unlimited debate. Rather than attempt to add to such statements, I wish, briefly, to state my own views which have been arrived at by observing the Senate for 20 years.

1. I believe that the right of unlimited debate is a force for the preservation of individual liberty, the maintenance of a government of law, and the adherence to the Constitution and the rights of our sovereign States. It places the rights of a minority, regardless of how small, and the rights of the individual in proper focus.

2. I believe that unlimited debate in the Senate tends to slow down and prevent the passage of legislation, thereby retarding the growth of big government and lessening the burdens of government on our people.

3. I believe that in some place in our large and complex government there should be unlimited discussion of public issues and that the Senate by reason of its size and its tradition and history is the logical place for unlimited debate.

4. I believe that the present cloture rule is an adequate restraint upon the right of unlimited debate in any time of emergency.

For the foregoing reasons I am opposed to Senate Resolution 17.

CARL T. CURTIS.